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CHAPTERS

ON THE

LAW RELATING TO THE COLONIES

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CHAPTERS

ON THE

LAW RELATING TO THE COLONIES

TO WHICH ARE APPENDED

TOPICAL INDEXES

OF

CASES DECIDED IN THE PRIVY COUNCIL ON APPEAL FROM THE COLONIES, CHANNEL ISLANDS AND THE ISLE OF MAN

AND OF

CASES RELATING TO THE COLONIES DECIDED IN THE ENGLISH COURTS OTHERWISE THAN ON APPEAL FROM THE COLONIES

BY

CHARLES JAMES TARRING, M.A.

SOMETIME JUDGE OF H.B.M. SUPREME CONSULAR COURT, CONSTANTINOPLE
AND H.M.'S CONSUL
LATE CHIEF JUSTICE OF GRENADA, WEST INDIES
AUTHOR OF "BRITISH CONSULAR JURISDICTION IN THE EAST"
"A TURKISH GRAMMAR," ETC.

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PREFACE TO THE THIRD EDITION.

In this Edition the Appeals from the Colonies decided by the Judicial Committee of the Privy Council since the last edition appeared, and decisions concerning the Colonies in other English Courts, have been included in the Topical Indexes, and the effect of many of them incorporated in the text. The number of cases from Canada has increased from 155 to 242, from New South Wales from 90 to 167, from all the Australian Colonies together from 188 to 377, and from all the Colonies together from some 780 to some 1140. There have been no appeals to the Privy Council reported since 1892 from Griqualand, New Brunswick, Prince Edward Island, Cape Breton Island, Malta, the Falklands, British Guiana, or Penang; and only one apiece from Bechuanaland, Sierra Leone, the Gold Coast, Lagos, Cyprus, Turk's Island, the Leeward Islands, the Windward Islands, Barbados, Bermuda, and the Straits Settlements. There will probably be fewer from the Australian

Colonies in future by reason of the establishment of the High Court of Australia as a Court of Appeal from the States of the Australian Commonwealth.

The elucidation of the relations between the Parliaments of the Dominion and of the Provinces of Canada in the discussions before the Judicial Committee of the Privy Council on Appeals from the Canadian Courts is of some constitutional interest; and the results have been set out in Chapter III., section 2.

Chapter VI., containing the Imperial Statutes relating to the Colonies, has been revised and corrected and brought down to date.

C. J. T.

LONDON, *July*, 1906.

PREFACE TO THE SECOND EDITION.

In this Edition the book has been considerably enlarged. The effect of recent decisions has been incorporated in the text. A new section describing the laws conferring Constitutions on those Colonies possessing responsible government has been added to Chapter III. The provisions of some important modern Statutes affecting the Colonies have been set out in Chapters III. and IV.—*e.g.*, the Fugitive Offenders' Act (an intra-Imperial Extradition Act) and Orders in Council made thereunder, the Colonial Prisoners Removal Act (creating a system of intercolonial transportation), the Colonial Copyright Act and Orders in Council made thereunder, the Merchant Shipping (Colonial Inquiries) Act, the Colonial Courts of Admiralty Act, the Evidence by Commission Act, the Acts for the ascertainment of British and of Foreign law, &c. The relations set up by the Foreign Jurisdiction Act between the Colonies and Her Majesty's Courts exercising extra-territorial jurisdiction have been exhibited in

Chapter IV. In the same chapter a discussion of the nature and enforcement of colonial judgments has been inserted. And a new Topical Index of cases relating to the Colonies decided in English Courts otherwise than on appeal has been added.

The Catalogues of Statutes and the Index of Cases on Appeal have been revised and brought down to date.

C. J. T.

CONSTANTINOPLE, *March*, 1893.

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*** The italicised names denote Colonies, and that the accompanying Statutes or Ordinances are laws of the respective Colonies.

ADDENDA.

P. 134, note 2. This Bill has passed both Houses of Parliament, and is now law.

P. 221. *Add* at the end of Section 1: 6 Edw. 7, c. 30: Colonial Marriages (Deceased Wife's Sister) Act, 1906.

P. 134. By a report of the Judicial Committee of the Privy Council, approved by H.M. by Order in Council, dated August 13, 1895, it was declared—

1. That unmixed marriages celebrated in Malta
   - (*a*) By English clergy,
   - (*b*) By Presbyterian ministers,
   - (*c*) By Wesleyan ministers,

   are valid:
2. That mixed marriages celebrated in Malta by ministers other than those of the Roman Catholic Church are valid.

It was added that the second conclusion might be shaken by the production of additional information and authorities if the question came before their Lordships judicially.

P. 249. Griqualand, 1. *Add* reference, 50 L. J. P. C. 1.

P. 253. New South Wales, 2. *Add* reference, L. R. 2 P. C. 83; 37 L. J. P. C. 44.

CHAPTERS

ON THE

LAW RELATING TO THE COLONIES.

INTRODUCTORY.

DEFINITION OF A COLONY.

Definition of a colony.

THE British Colonies or Plantations were formerly defined by a writer of authority as remote possessions of this realm, occupied for the purposes of trade or cultivation.[1]

The term "colony" has also been defined in several Acts of Parliament which have been passed for various purposes connected with the colonies,[2] but in each only for the purposes of the particular Act.

No general definition appears to have been enacted in any statute until the year 1889.

In the Act, however, to explain the Foreign Jurisdiction Act[3] British Colonies were made to include any of Her Majesty's possessions out of the United Kingdom. And in the Act to regulate sentences imposed by Colonial Courts where jurisdiction to try is conferred by Imperial Acts[4] the term "colony" was

1 Clark's Colonial Law, 1.

2 *E.g.*, 12 & 13 Vict. c. 96; 18 & 19 Vict. c. 104; 28 & 29 Vict. c. 63; 28 & 29 Vict. c. 113; 31 & 32 Vict. c. 37; 32 Vict. c. 10; 40 & 41 Vict. c. 23.

3 28 & 29 Vict. c. 116.

4 37 & 38 Vict. c. 27.

INTRODUCTORY.

Definition of a colony.

expressly interpreted to include India, but not the Isle of Man [1] or the Channel Islands.[2]

At length by the Interpretation Act of 1889 [3] it was enacted that in that and subsequent Acts of Parliament the expression "colony" should mean any part of Her Majesty's dominions exclusive of the British Islands and of British India; and that, where parts of such dominions were under both a central and a local legislature, all parts under the central legislature should be deemed to be one colony. The same Act [4] enacted that the expression "British possession" should mean any part of Her Majesty's dominions exclusive of the United Kingdom; and that, where parts of such dominions are under both a central and a local legislature, all parts under the central legislature should be deemed to be one British possession.

In the Act to enable Her Majesty to provide for the government of her possessions acquired by settlement [5] the expression "British Settlement" is used, and interpreted (s. 6) to mean any British possession which has not been acquired by cession or conquest, and is not for the time being within the jurisdiction of the legislature (constituted otherwise than by virtue of that Act or the Acts thereby repealed) of any British possession: and the expression "British possession" means any part of Her Majesty's possessions out of the United Kingdom.

1 As to the Isle of Man not being a foreign dominion of the Crown, see *In re Brown*, 33 L. J. Q. B. 193. But it is not within the United Kingdom, *Davison* v. *Farmer*, 6 Ex. 242.

2 See also 14 & 15 Vict. c. 99, s. 19, compared with 38 & 39 Vict. c. 66, sched ; 23 & 24 Vict. c. 88 ; 31 Vict. c. 29 ; and 31 & 32 Vict. c. 37.

3 52 & 53 Vict. c. 63, s. 18 (3).

4 S. 18 (2).

5 50 & 51 Vict. c. 54.

CHAPTER I.

THE LAWS TO WHICH THE COLONIES ARE SUBJECT.

COLONIES are formed either by settlement of an unoccupied or barbarous country, or by conquest or cession from other nations. These different modes of acquisition give rise to corresponding differences in the laws to which a colony becomes subject on its foundation.

Section 1.

Sect. 1. Occupied colonies.

"If there be a new and uninhabited country found out by English subjects, as the law is the birthright of English subjects, so wherever they go they carry their laws with them; and therefore such new-found country is to be governed by the laws of England."[1]

This proposition applies also to settlements made by Englishmen in barbarous countries, where they carry with them not only their laws, but the sovereignty of their own State; and those who live amongst them, and become members of their community, become also partakers of and subject to the same laws.[2]

The principle here enunciated is intelligible, convenient, and just, so far as the common law is concerned; and the doctrine is so limited in its expression in some authorities.[3] But inasmuch as English statute

[1] 2 P. Will. 75; *Blankard* v. *Galdy*, 2 Salk. 411; *May. of Lyons* v. *E. I. Co.*, 1 Moo. P. C. C. p. 272; *Forbes* v. *Cochrane*, 2 B. & C. p. 463; *The Lauderdale Peerage*, L. R. 10 App. 692. As to New South Wales, *vide Cattrall* v. *Cattrall*, 1 Robert. 580.

[2] *Advocate-General of Bengal* v. *Ranee Surnomoye Dossee*, 2 Moo. P. C. C., N. S., p. 59.

[3] Com. Dig. Ley (C.), *Falkland Islands* v. *The Queen*, 2 Moo. P. C. C., N. S., p. 273; *Municipality of Pictou* v. *Geldert*, L. R. (1893) A. C. p. 527, as to Nova Scotia.

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law is constantly being added to and altered by fresh enactments, it becomes necessary to consider how far the doctrine is to be understood to extend to that division of the law. Lord Mansfield lays down the rule as follows:[1]

"No Act of Parliament made after a colony is planted is construed to extend to it without express words showing the intention of the legislature to be that it should."[2]

The proposition is stated more at length by Lord Blackburn in a recent case as follows:[3]

"When the province of New York was founded by the English settlers who went out there, those English settlers carried with them all the immunities and privileges and laws of England. The Englishmen in a province which had been so settled were as free Englishmen, with as much privilege, as those that remained in England. It is true that it is only the law of England as it was at that time that such settlers carry with them; subsequent legislation in England altering the law does not affect their rights unless it is expressly made to extend to the province or the colony."

In some colonial Ordinances and Acts express provision is made as to the time at which the English law to be enforced in the colonies is to be ascertained. Thus in Hong Kong April 5, 1843, is fixed by Ordinance 12 of 1873; in the Falkland Islands January 1, 1850, by Ordinance 2 of 1876; in Fiji January 2, 1875, by Ordinance 14 of 1875. In Tobago, by an Act of the colonial legislature passed in 1841, it was declared that such parts of the common law and all statutes and parts of the public and general statute law of England, as are or shall be or become applicable and suitable to the circumstances and population of the

1 *R.* v. *Vaughan*, 4 Burr. p. 2500.
2 Cp. 2 P. Will. 75; *Cutterall* v. *Cutterall*, 1 Robert. p. 581.
3 *The Lauderdale Peerage*, L. R. 10 App. p. 744.

colony, should be in force in the island.[1] In New South Wales and Van Diemen's Land by 9 Geo. 4, c. 83, s. 24, the Laws and Statutes of England at the time of the passing of the Act (1828) are to prevail,[2] subject to the power of the colonial legislature to repeal any of them.[3] The operation of 9 Geo. 4, c. 83, applying the Nullum Tempus Act to New South Wales, cannot be restricted by confining the laws and statutes thereby applied to those relating to procedure, or by showing that a specific exception in the applied Act preserving the Crown's right could not operate in the circumstances of the Colony.[4] In Upper Canada the laws of England in force on October 15, 1792, are to be the rule as to property and civil rights by the Consolidated Statutes of 1859. In British Columbia by the Ordinance to assimilate the general application of English law, No. 7 of 1867, the civil and criminal laws of England as they existed November 19, 1858, and so far as the same are not from local circumstances inapplicable, are and shall be in force in all parts of the colony. But in applying the Ordinance to that part of the colony known as British Columbia before the union with Vancouver's Island, the said civil and criminal laws as the same existed at the date aforesaid shall be held to be modified and altered by all past legislation (of the said colony of British Columbia before the union and of the colony of British Columbia since the union) affecting the said colony of British Columbia as it existed before the union. And similarly as to Vancouver's Island. On the Gold Coast by Ordinance No. 4 of 1876 English law in force on January 24, 1874, is to be observed so far as the

1 See *Colonial Bank* v. *Warden*, 5 Moo. P. C. C., 340.

2 Cp. *Godfrey* v. *Poole*, L. R. 13 App. 497; and see *Astley* v. *Fisher*, 6 C. B. 572, and *Devine* v. *Holloway*, 14 M. P. C. C., 290, as to the meaning of this enactment; and *cf. Catterall* v. *Catterall*, 1 Robert. 580; *Whicker* v. *Hume*, 7 H. L. 124, 28 L. J. Ch. 124.

3 *Harris* v. *Davies*, L. R. 10 App. 279.

4 *A.-G. for New South Wales* v. *Lore*, L. R. (1898) A. C. 679, 67 L. J. P. C. 84.

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limits of local jurisdiction and circumstances permit; but native laws are to be respected as far as possible. And in the Act to grant a Representative Constitution to New Zealand [1] it is provided [2] (re-enacting s. 10 of 9 & 10 Vict. c. 103) that "whereas it may be expedient that the laws, customs, and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves in all their relations to and dealings with each other, and that particular districts should be set apart within which such laws, customs, and usages should be so observed: it shall be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from time to time to make provision for the purposes aforesaid, any repugnancy of any such native laws, customs, or usages to the law of England, or to any law, statute, or usage in force in New Zealand or in any part thereof, in any wise notwithstanding." Some colonies adopt English statutes without alteration, as in the case of the English Acts Act, 1854, of New Zealand, and Law No. 12 of 1855 of Trinidad, introducing all the then recent amendments in the English law of evidence. In such cases, when the English statute has been authoritatively construed by the Court of Appeal in England, such construction ought to be adopted by the Courts of the colony.[3]

English colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony.[4] In inquiring, therefore, if any one of our municipal laws

1 15 & 16 Vict. c. 72. 2 S. 71.

3 *Trimble* v. *Hill*, L. R. 5 App. p. 344. Approved in *Hunt* v. *Fripp*, L. R. (1898) 1 Ch. 675.

4 1 Blackst. by Harg. 107; *Kielley* v. *Carson*, 4 Moo. P. C. C. p. 84; *Campbell* v. *Hall*, 20 St. Tr. col. 289; *Freeman* v. *Fairlie*, 1 Moo. Ind. App. p. 323; *Falkland Islands* v. *The Queen*, 2 Moo. P. C. C., N. S., 266; *Colonial Bank* v. *Warden*, 5 Moo. P. C. C. 340; *The Lauderdale Peerage*, L. R. 10 App. p. 745, per Lord Blackburn. And so declared in Fiji by Ordinance 14 of 1875.

has been introduced into a particular territory acquired by the Crown (by conquest, cession, or settlement), the question may arise whether the law originated out of a purely local policy or not,—was it adapted solely to the mother country in which it was made?[1] Lord Campbell, however, pointed out in *Whicker* v. *Hume*[2] that it is a very difficult thing to decide what laws are adapted to the situation of a colony. The rule was applied in *Maclean* v. *Cristall*[3] to validate a marriage made in India which did not satisfy the condition of the common law as to the presence of a minister in holy orders laid down in *Reg.* v. *Millis*.[4]

The following statutes have been held not to apply to the places named:

The Mortmain Act, Grenada (a conquered colony), *A.-G.* v. *Stewart*, 2 Mer. 143; New South Wales (a settled colony), *Whicker* v. *Hume*, 7 H. L. 124, where the principle of the exclusion of the Mortmain Act was declared applicable to all colonies; British Honduras, *Jex* v. *McKinney*, L. R. 14 App. 77.

Positive Regulations of Police, Jamaica, *R.* v. *Vaughan*, 4 Burr. 2500.

Statute of Frauds as to devises, Barbados, 2 P. Will. 75.

Penal Statutes, Barbados, *Dawes* v. *Painter*, Freeman, 175.

Statute of Limitations, Jamaica, *Pitt* v. *Lord Dacre*, L. R. 3 Ch. D. 295.

The Alien Acts, India, *Mayor of Lyons* v. *East India Co.*, 1 Moo. P. C. C. 175.

The Marriage Acts, India, *Lautour* v. *Teesdale*, 8 Taunt. 830.[5]

1 *A.-G.* v. *Stewart*, 2 Mer. pp. 159–161; *May. of Lyons* v. *E. India Co.*, 1 Moo. P. C. C. 175; *Yeap Cheah Neo.* v. *Ong Cheng Neo.*, L. R. 6 P. C. 381.

2 7 H. L. p. 161.

3 Perry's Oriental Cases, 75.

4 10 C. & F. 534.

5 The matrimonial law of the colonies, it appears from this case, is

The Bankrupt Acts, 6 Geo. 4, c. 16, and 2 & 3 Will. 4, c. 114, India, *Clark* v. *Mullick*, 3 Moo. P. C. C. 252; *Cleve* v. *Mills*, see 1 Cooke's Bankrupt Law, 8th ed. by Roberts, 333.[1]

The Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, New Zealand, *Bunny* v. *Hart*, 11 Moo. P. C. C. 189.[1]

Statute of Charitable Uses, Nevis, *Campbell* v. *Hall*, 20 State Tr. col. 289. And see *Bunny* v. *Hart*, 11 M. P. C. C. 189.

The Wills Act, 7 Will. 4 & 1 Vict. c. 26, the Colonies and India, *In re Goods of Foy*, 2 Curt. 328.

The Imperial Joint Stock Companies Arrangement Act of 1870, Victoria, *New Zealand Loan and Mercantile Agency Co.* v. *Morrison*, L. R. (1898) A. C. 349, 67 L. J. P. C. 10. The provisions of the Act are expressed to extend to all creditors; and so they do, foreign as well as colonial creditors, but only when their rights are in question in the Courts of the United Kingdom.

In a case on appeal from Victoria[2] the Judicial Committee of the Privy Council held that a gift by the will of a domiciled Victorian of money to an English corporation for the purchase of land in England for charitable purposes was good as governed by the law of Victoria, to which colony the Mortmain Act, 51 & 52 Vict. c. 42, did not extend; and that the executors were bound to pay the legacy to the corporation. "To declare that a bequest made by a

identical with that prevailing in England before the first Marriage Act (Lord Hardwicke's, 26 Geo. 2, c. 33), except when it has been regulated by enactments or ordinances of their own municipal law, or by Orders in Council. *Vide Cutterall* v. *Cutterall*, 1 Robert. 580. See *post*, p. 12.

[1] Cp. *Ex parte Blain*, L. R. 12 Ch. D. 522. But see *Ellis* v. *M'Henry*, L. R. 6 C. P. 228, and *Ex parte Rogers*, L. R. 16 Ch. D. 665.

[2] *Mayor, Aldermen and Citizens of Canterbury* v. *Wyburn and Melbourne Hospital*, L. R. (1895) A. C. 89; 64 L. J. P. C. 36.

colonial will shall be void on the ground that it contravenes the local law of England may not be beyond the competence of the Imperial Parliament, but is quite beyond its ordinary scope; and such an intention ought not to be imputed to it without very clear grounds. . . . It cannot have been intended that methods of a local character prescribed for making a lawful gift should be adopted in a distant colony, or if not that the gift should be invalid." But the English law will operate whenever a purchase of land for charitable uses is effected; but no earlier. The assurance of that land must be made in accordance with the provisions of the (Mortmain) Act.

On the other hand, the English Bankruptcy Act has been held to apply to the whole of Her Majesty's dominions;[1] and the Nullum Tempus Act (9 Geo. 3, c. 16) applies to New South Wales by force of 9 Geo. 4, c. 83.[2] The rule against perpetuities, which has been recognised as existing in the law of England independently of any statute, was held to have been part of the law of England introduced into Penang, being considered to be founded upon considerations of public policy as applicable to the condition of such a place as to England—viz., to prevent the mischief of making property inalienable unless for objects in some way useful to the whole community. And the exception made by the law of England, also on grounds of public policy, in favour of gifts for purposes useful and beneficial to the public, and which, in a wide sense of the term, are called charitable uses, may properly be assumed to have passed with the rule into the law of the colony.[3] But it has been held inapplicable to Crown grants in a colony.[4]

1 *Callender, Sykes & Co.* v. *Colonial Secretary of Lagos*: *Williams* v. *Davies*, L. R. (1891) A. C. 460.
2 *A.-G. for New South Wales* v. *Love*, L. R. (1898), A. C. 679.
3 *Yeap Cheah Neo.* v. *Ong Cheng Neo.*, L. R. 6 P. C. p. 394.
4 *Cooper* v. *Stuart*, L. R. 14 App. 286.

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In *Rochefoucauld* v. *Boustead*,[1] in which the plaintiff sought to recover lands in Ceylon, the Court in giving judgment made the following observations as to the application of the Statute of Frauds to the case: "Having regard to the language of s. 7 we are unable to see why the defendant should not be able to rely on that statute as a defence to any proceedings in this country having for their object the proof and enforcement of a trust even of lands abroad. The statute relates to the kind of proof required in this country to enable the plaintiff suing here to establish his case. It does not relate to lands abroad any more than this —it regulates the procedure here, not the titles to land in other countries."

As no ecclesiastical law is required in a colony where there is no established church, the ecclesiastical law of England cannot be treated as part of the law which settlers carry with them from the mother country.[2]

The laws of any colony are to extend to the military forces raised in the colony.[3]

In certain cases Acts of Parliament have been passed to give territorial extension to the operation of English law. Any part of the sea within one marine league of the coast measured from low-water mark is to be deemed to be open sea within the territorial waters of His Majesty's dominions for the purposes of the Territorial Waters Jurisdiction Act, 1878.[4] The Act for the prevention and punishment of offences committed by His Majesty's subjects within certain territories adjacent to the colony of Sierra Leone[5] recites that the inhabitants of territories adjacent to Sierra Leone extending to the Rio Grande to the North of the colony, to the Rio Gallinas to the South of the colony, and for four hundred miles to the East of the

1 L. R. (1897) 1 Ch. D. 196; 66 L. J. Ch. 74.
2 *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., 115, 152.
3 44 & 45 Vict. c. 58, s. 177.
4 41 & 42 Vict. c. 73, s. 7.
5 24 & 25 Vict. c. 31.

colony, were in an uncivilised state, and that offences against their persons and property were frequently committed by His Majesty's subjects with impunity. It then enacts [1] that the laws in force at Sierra Leone for the punishment of crimes committed there should be extended to His Majesty's subjects within any of the territories defined in the preamble; and power is given [2] to the Governors of the colony to appoint magistrates from among the persons residing in the territories in question.

Similar provision for the prevention and punishment of offences by British subjects in territories in S. Africa not within the jurisdiction of any civilised government was made by 26 & 27 Vict. c. 35.[3]

The 34 Vict. c. 18, on the other hand, recites that the inhabitants of certain territories in Africa adjoining His Majesty's settlements of Sierra Leone, Gambia, Gold Coast, Lagos, and the adjacent protectorates were not within any civilised jurisdiction; and that crimes had been, and were likely to be, committed within such territories against British subjects and persons resident within the said settlements. It therefore enacts [4] that crimes or offences committed within twenty miles of the settlements or protectorates by His Majesty's subjects or by persons not subjects of any civilised power against the persons of British subjects or of residents within the settlements should be tried and punished as if committed within the settlements.

The following Acts provide for cases where British subjects are settled in barbarous or desolate countries without having established any legal form of government, or received any constitution from the sovereign.

The British Settlements Act, 1887,[5] repealing

1 S. 1. 2 S. 2.

3 See now the Africa Orders in Council, 1889, 1892, 1893, made under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), by the first of which both these Acts may be revoked or varied by Order in Council (see s. 17).

4 S. 1. 5 50 & 51 Vict. c. 54.

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6 & 7 Vict. c. 13 and 23 & 24 Vict. c. 121, after reciting the expediency of extending Her Majesty's power to provide for the government of settlements of her subjects in places not under any civilised government, gives power to His Majesty in Council to make laws and establish courts, &c., in any British settlement; to delegate such powers to any three or more persons within any such settlement; and to confer on any court in any British possession any jurisdiction that might be conferred on a court in a British settlement over matters occurring or arising there. British settlement is defined in s. 6 of the Act to mean any British possession not acquired by cession or conquest, and not for the time being within the jurisdiction of the legislature, constituted otherwise than by virtue of the Act or any other Act repealed thereby, of any British possession.

By the Foreign Jurisdiction Act, 1890,[1] where a foreign country is not subject to any government from whom His Majesty the King might obtain jurisdiction in the manner recited by that Act (*i.e.*, by treaty, capitulation, grant, usage, sufferance, or other lawful means), His Majesty shall have jurisdiction over His subjects for the time being resident in or resorting to that country, and that jurisdiction shall be jurisdiction of His Majesty in a foreign country within the meaning of the other provisions of that Act.[2]

The only law applicable to marriages in such parts of the world was, till very recently, the common law of England as it existed before the Marriage Act, by which, as decided by the House of Lords in *The Queen* v. *Millis*,[3] the presence of a minister in holy orders is essential to the celebration of a valid marriage. In *Maclean* v. *Cristall*[4] the Supreme Court

[1] 53 & 54 Vict. c. 37. [2] S. 2.

[3] 10 C. & F. 534. And *cf. Limerick* v. *Limerick*, 32 L. J. P. M. & A. 92; 4 S. & T. 252. *Reg.* v. *Millis* was criticised in *Catterall* v. *Catterall*, 1 Rob. Ecc. 580; Dicey (Conflict of Laws, 634 n.) doubts if it is binding in Colonial Courts, the appeal from them lying to the Privy Council, not to the House of Lords. [4] Perry's Oriental Cases, 75.

of Bombay laid it down that that requirement was a part of the common law of England that was not introduced into India, because the circumstances of the English residents there made it unsuitable; and decided that a marriage celebrated at Surat by a missionary who was a Congregational minister, when there was no English chaplain resident, was valid. It was, however, found advisable subsequently to pass an Act (14 & 15 Vict. c. 40)[1] to provide for marriages in India. And in *Beamish* v. *Beamish*,[2] in which *Maclean* v. *Cristall* was mentioned, Lord Cranworth, though wishing to guard himself against its being supposed to be clear that the decision in the *Queen* v. *Millis*[3] applied to the case of marriages of necessity entered into when the presence of a minister in holy orders may have been impossible, declared that the question must be considered as still open. In *Armitage* v. *Armitage*[4] the descent of certain property depended upon the question whether a marriage could be presumed to have taken place in New Zealand, before it became a British colony, between a man claiming to be a British subject and a native of New Zealand according to the customs in force in that country. An inquiry was directed to show what those customs were; but it is clear from the subsequent case of *In re Bethell*[5] that they would not have been allowed by the Court to form a binding marriage tie. That case decided that the union of a domiciled Englishman with a woman of the Barolong tribe in Bechuanaland, S. Africa, according to the customs of the tribe was not a valid marriage according to the law of England, not having been formed on the same basis as marriages throughout Christendom, and not

1 Repealed by Statute Law Revision Act. 1875, except s. 22. The Indian Christian Marriage Act, XV. of 1872, is now the law regulating the marriages of European British subjects in India, and among other things validates marriages solemnised by any minister of religion licensed thereto under the Act.

2 9 H. L. p. 348.

3 10 C. & F. 534.

4 L. R. 3 Eq. 343.

5 L. R. 38 Ch. D. 220.

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being in its essence the voluntary union for life of one man and one woman to the exclusion of all others. And in *Swift* v. *Kelly* [1] Lord Brougham gave utterance to a dictum that the rule of the *lex loci* (that a foreign marriage valid according to the law of the country where it is celebrated is good everywhere) prevails only within the pale of Christianity. It has been held that the rule does not apply to polygamous countries.[2]

But in *Brinkley* v. *Attorney-General* [3] it was laid down that the phrases "Christian marriage," "marriage in Christendom," or equivalent phrases, used in judgments given on the subject of marriage, had only been used for convenience to express the idea that the only marriage recognised in Christian countries and in Christendom is marriage of one man and one woman, to the exclusion of all others; and that, as a Japanese marriage is a marriage of that character, a valid marriage could take place in Japan between an Englishman and a Japanese woman according to the law of Japan, which would be a valid marriage in England and everywhere else.

A marriage between British subjects solemnised on board an English man-of-war lying at Limasol, Cyprus, by the chaplain of the vessel, who was a clergyman of the established church, there having been no publication of banns, and no licence having been obtained, was held a valid marriage by the common law of England.[4]

Now by the Foreign Marriage Act, 1892,[5] marriages may be solemnised between parties of whom one at least is a British subject [6] before any person appointed by a Secretary of State in pursuance of the marriage regulations made under the Act [7] to act in the place of a high commissioner or resident whether

1 3 Knapp, p. 278.
2 *Hyde* v. *Hyde and Woodmansee*, L. R. 1 P. & D. 130; and *In re Bethell*, L. R. 38 Ch. D. 220.
3 L. R. 15 P. D. 76.
4 *Culling* v. *Culling*, L. R. (1896) P. 116.
5 55 & 56 Vict. c. 23.
6 S. 1.
7 S. 21.

within or outside of His Majesty's dominions,[1] or on board one of His Majesty's ships on a foreign station [2] by or before the commanding officer or other authorised person.[3]

The general rule of practice in matrimonial suits arising out of colonial marriages is to require evidence of the validity of such a marriage to be given by a practitioner in the Courts of the Colony in which the marriage has been celebrated. But when there is a practical difficulty in the way of adducing such evidence, the Court may accept the evidence of a gentleman who, not as a mere amateur, but from professional research and experience in relation to the marriage laws of the Colony in question, is in the opinion of the Court sufficiently qualified to express an opinion on the validity of a marriage there celebrated.[4]

His Majesty is empowered by the Foreign Jurisdiction Act, 1890,[5] to direct by Order in Council that all or any of the enactments mentioned below,[6] or any enactments for the time being in force amending or substituted for the same, shall extend, with or without any exceptions, adaptations, or modifications in the Order mentioned, to any foreign country in which for the time being His Majesty has jurisdiction; and thereupon those enactments shall, to the extent of that jurisdiction, operate as if that country were a British possession, and as if His Majesty in Council were the legislature of that possession.

1 S. 11 (2 *e*). 2 S. 12. 3 S. 21 (1 *e*, *f*).
4 *Wilson* v. *Wilson*, L. R. (1903) P. 157.
5 53 & 54 Vict. c. 37, s. 5.
6 12 & 13 Vict. c. 96 (Admiralty Offences, Colonial); 14 & 15 Vict. c. 99 (Evidence), ss. 7, 11; 17 & 18 Vict. c. 104 (Merchant Shipping), Part X.; 19 & 20 Vict. c. 113 (Foreign Tribunals Evidence); 22 Vict. c. 20 (Evidence by Commission); 22 & 23 Vict. c. 63 (British Law Ascertainment); 23 & 24 Vict. c. 122 (Admiralty Offences); 24 & 25 Vict. c. 11 (Foreign Law Ascertainment); 30 & 31 Vict. c. 124 (Merchant Shipping Act Amendment), s. 11; 37 & 38 Vict. c. 94 (Conveyancing, Scotland), s. 51; 44 & 45 Vict. c. 69 (Fugitive Offenders); 48 & 49 Vict. c. 74 (Evidence by Commission).

Section 2.

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In conquered countries the laws remain until they are altered by the conqueror.[1] Thus in Lower Canada (Quebec) the Old French Law prevails (unless altered by legislation) in civil matters[2]; where the law relating to property from 1774 to 1867, when the Codes came into force, must be taken to be the "Coutume de Paris," except in such special cases as may be shown to fall under some other law,[3] but the criminal law is that in force in England in 1763.[4] In S. Lucia a code of civil law based upon the principles of the ancient law of the island[5] came into force in October 1879. In the Mauritius the French Codes prevail for civil matters.[6] In Ceylon,[7] the Cape of Good Hope,[8] Natal,[9] and in the civil courts of British Guiana,[10] the Roman-Dutch law prevails.[11] In Trinidad the laws of Spain as established there at the time of its capture by England in 1797 remain in force so far as not

1 *Campbell* v. *Hall*, 20 State Tr. col. 323; *Blankard* v. *Galdy*, 2 Salk. 411: *R.* v. *Vaughan*, 4 Burr. p. 2500; *Ruding* v. *Smith*, 2 Hagg. Consist. Rep. p. 382.

2 *Nye* v. *Macdonald*, L. R. 3 P. C. 331. See also *Symes* v. *Curillier*. L. R. 5 App. 138.

3 *Exchange Bank of Canada* v. *Reg.*, L. R. 11 App. p. 164.

4 *Reg.* v. *Coote*, L. R. 4 P. C. 599.

5 The Coutume de Paris, *Du Boulay* v. *Du Boulay*, L. R. 2 P. C. 430; *Gahan* v. *Lafitte*, 3 Moo. P. C. C. 382.

6 *D'Epinay* v. *Cockerell*, 1 Moo. P. C. C. 103; *In re Adam*, 1 Moo. P. C. C. 460; *Rochecouste* v. *Dupont*, 2 Moo. P. C. C., N. S., 195; *Chapman* v. *Oriental Bank Corporation*, 2 Moo. P. C. C., N. S., 463; *Peninsular and Oriental S.N. Co.* v. *Shand*, 3 Moo. P. C. C., N. S., 272: *Sérendat* v. *Saisse*, L. R. 1 P. C. 152; *H.M. Procureur-Général* v. *Bruneau*, L. R. 1 P. C. 169; *Lagesse* v. *Lagesse*, L. R. 4 P. C. 553; *Courtaux* v. *Hewetson*, L. R. 6 P. C. 407.

7 *Lindsay* v. *Oriental Bank Corporation*, 13 Moo. P. C. C. 401; *Hettihewage Siman Appu* v. *Queen's Advocate*, L. R. 9 App. 571.

8 *Denyssen* v. *Mostert*, L. R. 4 P. C. 236; *Scott* v. *H.M.'s Attorney-General*, L. R. 11 P. D. 128.

9 *Molyneux* v. *Natal Land and Colonization Co.*, L. R. (1905) A. C. 555.

10 *McDermott* v. *Judges of British Guiana*, L. R. 2 P. C. 341.

11 There is no authority for saying that the Roman-Dutch law of Holland in force in Ceylon at the time of its conquest by the British empowered the subject to sue the Government. But since the conquest a very extensive practice of suing the Crown has sprung up and been recognised by the legislature, and is now incorporated into the law of the land. See *Hettihewage Siman Appu* v. *Queen's Advocate*, L. R. 9 App. 571.

abolished by legislation.[1] In Gibraltar the law of England as it existed on 31st December, 1883, is to be, subject to some exceptions, thereafter in force in the city, garrison, and territory of Gibraltar.[2]

This doctrine was discussed at considerable length by Lord Stowell in *Ruding* v. *Smith*.[3] That learned judge pointed out that even with respect to the ancient inhabitants no small portion of the ancient law is unavoidably superseded by the revolution of government that has taken place. The allegiance of the subjects, and all the law that relates to it—the administration of the law in the sovereign, and appellate jurisdictions, and all the laws connected with the exercise of the sovereign authority—must undergo alterations adapted to the change.[4]

"Though the old laws are to remain, it is surely a sufficient application of such terms as 'that they shall remain in force,' if they continue to govern (as far as they do continue) the transactions of the ancient settlers with each other, and with the new owners. To allow that they shall intrude into all the separate transactions of the British conquerors is to give them a validity which they would otherwise want in all cases whatever."[5]

This would appear to be stated too broadly. The word "remain" may be understood with reference not only to the old inhabitants, but to the country in which the laws have had sway. At the present day it is the territorial rather than the personal application

[1] See *Escalier* v. *Escalier*, L. R. 10 App. 312. Spanish law, however, now only governs: (1) The construction of deeds, and the disposition of property by wills, made before June 10, 1844; (2) Institution of the heir in cases of birth before March 12, 1846, and intestacy and succession to the person before the same date; (3) Right of illegitimate persons born before the same date to take as next of kin to their mother, and of their mother to take as next of kin to them; (4) Form of wills made before January 13, 1845. See *Journal of the Society of Comparative Legislation*, vol. 2 (1897), 292.

[2] Order in Council, Feb. 2, 1884, cl. 2; *London Gazette*, 1884, p. 579; and see cl. 4.

[3] 2 Hagg. Consist. Rep. 371.

[4] Ibid. p. 382.

[5] Ibid. p. 383.

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of laws that is the rule in countries of the European type. The ex-territoriality clauses in treaties with Eastern powers, such as China or Japan, whereby Europeans resident in those countries are or were exempted from the jurisdiction of native courts and magistrates, reviving to some extent the system of personal laws that obtained in Europe after the break-up of the Roman Empire, are looked upon only as a temporary and inconvenient expedient, and are open to objection as curtailing the sovereign rights of independent states.

Lord Mansfield lays down in *Campbell* v. *Hall* that the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privileges distinct from the natives.[1] Every alien coming into a British colony becomes temporarily a subject of the Crown,—bound by, subject to, and entitled to the benefit of, the laws which affect all British subjects. He has obligations and rights both within and beyond the colony into which he comes. As to his rights within the colony he may well be bound by its laws; but as to his rights beyond the colony he cannot be affected by those laws, for the laws of a colony cannot extend beyond its territorial limits.[2]

In *Ruding* v. *Smith*[3] Lord Stowell was examining whether a marriage celebrated at the Cape of Good Hope according to English law, shortly after the surrender of that colony by the Dutch to the English, was invalid as not conformable to the Dutch law, the *lex loci*. The colony was surrendered to the British

[1] 29 St. Tr. col. 323.
[2] *Low* v. *Routledge*, L. R. 1 Ch. App. p. 47.
[3] 2 Hagg. Consist. Rep. p. 371.

forces in 1795. Mr. Ruding, a British subject, came there in September 1796, on his way to serve with his regiment in the East Indies; and was married to an Englishwoman in October 1796, by the chaplain of the British garrison in a private house under a licence from the commander-in-chief of the British forces there.[1] Lord Stowell decided that the marriage was valid, on the distinct British character of the parties—on their independence of the Dutch law in their own British transactions—on the insuperable difficulties of obtaining any marriage conformable to the Dutch law—on the countenance given by British authorities and British ministration to this British transaction—upon the whole country being under British dominion—and upon the other grounds to which he had adverted.[1] The principle of the decision is embodied in the following proposition by Mr. Westlake in his *Private International Law*[2]: "Where a marriage valid according to the *lex loci actus* is impossible from the want of any such law applicable to the case, parties may marry with the forms, so far as it is possible to observe them, and with the consents, respectively required by their own law." Mr. Westlake adds that in *Ruding* v. *Smith* the impossibility arose from the Dutch law at the Cape of Good Hope not applying to British persons passing through the place so soon after the conquest that its future legal system was not settled.[3] Now all marriages solemnised within the British lines by any chaplain or officer or other person officiating under the orders of the commanding officer of a British army serving abroad, are to be as valid in law as if the same had been solemnised within the United Kingdom with a due observance of all forms required by law.[4]

Statutes manifestly of universal policy, and intended

1 2 Hagg. Consist. Rep. p. 394. 2 4th ed. p. 62.
3 Cp. *Armitage* v. *Armitage*, L. R. 3 Eq. 343.
4 55 & 56 Vict. c. 23 (The Foreign Marriage Act, 1892), s. 21

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to affect all our transmarine possessions at whatever period they shall be acquired—*e.g.*, navigation laws, and Acts for abolishing slavery and the slave trade—come into force independently of posterior legislation immediately on conquest or cession.[1] So also the English bankruptcy law has been held binding in the colonies.[2]

The *status* of persons domiciled in a colony is determined by English law; the rights and liabilities incidental to such *status* by colonial law.[3]

Laws contrary to the fundamental principles of the British constitution cease at the moment of conquest.[4] Accordingly torture cannot be inflicted by English authority in a conquered colony. "The torture, as well as banishment, was the old law of Minorca, which fell of course when it came into our possession. Every English governor knew he could not inflict the torture; the constitution of this country put an end to that idea."[5]

The power of the sovereign to make new laws for a conquered country has often been asserted by the Courts. "Where the King of England conquers a country, it is a different consideration; for then the conqueror, by saving the lives of the people conquered, gains a right and property in such people; in consequence of which he may impose upon them what laws he pleases."[6] In *Smith* v. *Brown*[7] Lord Holt said that the laws of England did not extend to Virginia; being a conquered country, their law was what the king pleased. So in *Beaumont* v. *Barrett*[8] it was laid

1 Clark's Colonial Law, 15, 16; *Dawes* v. *Painter*, Freem. 175.

2 *Ellis* v. *M'Henry*, L. R. 6 C. P. 228; *Callender, Sykes & Co.* v. *Col. Sec. of Lagos*, L. R. (1891) A. C. 460; cp. *Ex parte Rogers*, L. R. 16 Ch. D. 665; *Gill* v. *Baron*, L. R. 2 P. C. 157. But see *ante*, p. 8.

3 *In re Adam*, 1 Moo. P. C. C. 460.

4 Cp. Lord Ellenborough, 30 St. Tr. col. 742.

5 *Fabrigas* v. *Mostyn*, 20 St. Tr. col. 181. As to Chinese slavery in Hong Kong, *vide* Blue Book [C. 3185] of 1882.

6 2 P. Will. 75; cp. *A.-G.* v. *Stewart*, 3 Mer. p. 157.

7 2 Salk. 666. 8 1 Moo. P. C. C. p. 75.

down that Jamaica was a conquered island, and, as in other territory obtained by conquest, such laws were in force there as the king by his supreme authority might choose to direct. The king has the whole legislative power in a conquered colony, in so far as he may not have parted with it by capitulation or by his own voluntary grant.[1] "It is familiar law, which cannot now be denied, that a conqueror has a right to impress on conquered territory what system of jurisprudence he pleases."[2]

But where the sovereign has once granted legislative powers to a colony, he cannot afterwards himself exercise those powers in reference to local matters. This was decided in the celebrated case of *Campbell* v. *Hall*,[3] an action brought to recover a sum of money paid to the collector of His Majesty George the Third as a duty of $4\frac{1}{2}$ per cent. on certain exports from the island of Grenada. The Court gave judgment for the plaintiff on the ground that, previously to issuing the Letters Patent imposing the duty, the king had empowered the governor to summon a legislative assembly for the island, and had thereby precluded himself from afterwards exercising legislative authority by virtue of his prerogative.

The same principle was acted on in *In re Bishop of Natal*.[4] There the Queen, as sovereign and head of the Established Church, had created by Letters Patent a Metropolitan, with episcopal jurisdiction in the colony of the Cape of Good Hope, which colony had at the time a Legislative Council and House of Assembly. By the Letters Patent the Metropolitan was to exercise metropolitan jurisdiction over the Bishop of Natal, with power to visit, correct, and supply the defects of the said bishop. By other Letters Patent a Bishop of

1 *Cameron* v. *Kyte*, 3 Knapp, p. 346.
2 *Ex parte Carew*, L. R. (1897) A. C. p. 720, per Lord Halsbury, L.C.
3 20 St. Tr. 239.
4 3 Moo. P. C. C., N. S., 115, following *Long* v. *Bishop of Cape Town*, 1 Moo. P. C. C., N. S., 411.

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Natal was created, to be subject and subordinate to the See of Cape Town in the same manner as a bishop of any See within the Province of Canterbury was under the authority of the archbishop thereof; with an appeal to the archbishop. The District of Natal had previously been granted by Letters Patent from the Crown a Legislative Council partly elective. These Letters Patent were not made in pursuance of any Order in Council or Imperial Statute, nor confirmed by any Act of the Legislature of the Cape of Good Hope or of the Legislative Council of Natal. The Metropolitan having sentenced the Bishop of Natal to deposition from his office, the sentence was, on appeal to the Judicial Committee, held to be void. They apprehended it to be clear on principle that, after the establishment of an independent legislature in the settlements of the Cape of Good Hope and Natal, there was no power in the Crown by virtue of its prerogative to establish a metropolitan See or Province, or to create an ecclesiastical corporation whose *status*, rights, and authority the colony could be required to recognise.

The United Church of England (and Ireland) is not a part of the constitution in any colonial settlement, nor can its authorities or those who bear office in it claim to be recognised by the law of the colony otherwise than as the members of a voluntary association.[1]

The Church of England in places where there is no church established by law is in the same situation with any other religious body,—in no better, but in no worse, position; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their own body, which will be binding on those who expressly or by implication have assented to them. When any religious or other lawful association has not only agreed on the

[1] *In re Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 148.

terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation, the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed, and if not, has proceeded in a manner consonant with the principles of justice. In such cases the tribunals so constituted are not in any sense Courts. They derive no authority from the Crown, they have no power of their own to enforce their sentences; they must apply for that purpose to the Courts established by law; and such Courts will give effect to their decision as they give effect to the decisions of arbitrators, whose jurisdiction rests entirely upon the agreement of the parties. These are the principles upon which the Courts in England have always acted in the disputes which have arisen between members of the same religious body, not being members of the Church of England.[1]

Although in a Crown colony, properly so called, or in cases where the Letters Patent are made in pursuance of the authority of an Act of Parliament (such, for example, as the Act 6 & 7 Vict. c. 13, or now 50 & 51 Vict. c. 54), a bishopric may be constituted, and ecclesiastical jurisdiction conferred, by the sole authority of the Crown, yet the Letters Patent from the Crown will not have any such effect or operation in a colony or settlement which is possessed of an independent legislature.[2]

The Crown has no prerogative right to present to a benefice in England becoming vacant by the promotion of the incumbent to a colonial bishopric within the King's dominions, which has been erected and

[1] *Long* v. *Bishop of Capetown*, 1 Moo. P. C. C., N. S., 411. See *Bishop of Natal* v. *Gladstone*, L. R. 3 Eq. pp. 35, 38. And cp. *Merriman* v. *Williams*, L. R. 7 App. 484.

[2] *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., p 151.

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constituted solely by the exercise of the prerogative of the King.[1]

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It cannot be said that any ecclesiastical tribunal or jurisdiction is required in any colony or settlement where there is no established church; and in the case of a settled colony the ecclesiastical law of England cannot for the same reason be treated as part of the law which the settlers carried with them from the mother country.[2] There is no power in the Crown to create any new or additional ecclesiastical tribunal or jurisdiction. No metropolitan or bishop in any colony having legislative institutions can, by virtue of the Crown's Letters Patent alone (unless granted under an Act of Parliament or confirmed by a colonial statute), exercise any coercive jurisdiction or hold any court or tribunal for that purpose.[3]

A colonial bishop may as bishop visit; he may as bishop call before him the ministers within his diocese; and he may inquire respecting their morals and behaviour and the doctrines that they preach; but the power of enforcing obedience to his orders in the performance of these duties, and the power of removing any obstruction which may be interposed to prevent his performing any of the functions of a bishop, are not given to him personally or to any officers of his or dependent upon him. To enforce obedience to his orders, or to remove obstructions interposed to prevent him from performing his functions, he must have recourse to the civil tribunals which administer the law of the colony, before which the person who resists the acts of the bishop may contest the validity or legality of the acts intended to be done by the bishop, or of the orders given by him.[4] With the assistance of the secular tribunals in the colony he can perform

[1] *Reg.* v. *Provost and Fellows of Eton College and Rev. J. A. Clarke* 27 L. J. Q. B. 132; 8 E. & B. 610.
[2] *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 152.
[3] Ibid. 154.
[4] *Bishop of Natal* v. *Gladstone*, L. R. 3 Eq. p. 33.

all the acts and duties which belong to the office of bishop according to the doctrine of the Church of England.[1] A bishop in a colony is bishop only over all the members of the Church of England resident within the colony.[2]

After a colony or settlement has received legislative institutions, the Crown (subject to the special provisions of any Act of Parliament) stands in the same relation to that colony or settlement as it does to the United Kingdom.[3]

The power of the Crown to make law may be exercised not only by Order in Council, but by charter of justice under the Great Seal.[4]

But the King can make no laws which are contrary to fundamental principles, none exempting from the laws of trade or the authority of Parliament, or giving privileges exclusive of his other subjects.[5]

In ceded colonies the sovereign's legislative power is the same as in conquered colonies; except that, if the treaty of cession regulate the right of legislation, the terms ought to be obeyed. Thus the Mauritius, before its surrender to Great Britain in 1810, was a French Colony; and having been surrendered on the condition that the inhabitants should preserve their religion, laws, and customs, the law of France as established in the colony before that event must be looked to.[6] As to the effect of a cession of British territory on the nationality of persons domiciled therein at the time and continuing therein, *vide Doe* v. *Acklam*.[7]

It is doubtful whether in colonies not governed by the Common Law of England the right of presenting a Petition of Right to the Crown exists, except where

1 *Bishop of Natal* v. *Gladstone*, L. R. 3 Eq. p. 34.
2 Ibid. p. 41. 3 3 Moo. P. C. C., N. S., p. 148.
4 *Jephson* v. *Riera*, 3 Knapp, 130. In this case it was decided that the English law of real property had been substituted for the law of Gibraltar, so as to give a widow dowry of her husband's land.
5 20 St. Tr. col. 323. But see the provisions of the Colonial Laws Validity Act, 1865 (28 & 29 Vict. c. 63), s. 3, *post* chap. iii., s. 3.
6 *In re Adam*, 1 Moo. P. C. C. p. 470.
7 2 B. & C. 779; 2 L. J. K. B. 129.

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it has been conferred by statute, as in Canada and some other colonies.[1]

Section 3.

As to the distinction in general between colonies by settlement and colonies by conquest or cession, the following observations were made by the Master in his report in the case of *Freeman* v. *Fairlie*:[2] "I apprehend the true general distinction to be in effect between countries in which there are not, and countries in which there are, at the time of their acquisition, any existing civil institutions and laws; it being in the first of those cases matter of necessity that the British settlers should use their native laws, as having no others to resort to; whereas in the other case there is an established *lex loci* which it might be highly inconvenient all at once to abrogate, and therefore it remains till changed by the deliberative wisdom of the new legislative power. In the former case also there are not, but in the latter case there are, new subjects to be governed, ignorant of the English laws, and unprepared perhaps in civil and political character to receive them. The reason why the rules are laid down in books of authority with reference to the distinction between new-discovered countries on the one hand, and ceded or conquered countries on the other, may be found, I conceive, in the fact that this distinction had always, or almost always, practically corresponded with that between the absence and the existence of a *lex loci*, by which the British settlers might, without inconvenience, for a time be governed; for the powers from whom we had wrested colonies by conquest, or had obtained them by treaties of cession, had ordinarily, if not always, been civilised and Christian

[1] See Clode's Petition of Right, p. 36; a list of colonies where laws have been made regulating the procedure for presenting Petitions of Right is given in App. B.

[2] 1 Moo. Ind. App. 324.

states, whose institutions therefore were not wholly dissimilar to our own."

The law of a colony upon any particular point must be proved as a matter of fact in the Courts at Westminster.[1] A provincial law will not be noticed by the Judicial Committee of the Privy Council if it is not mentioned on the record.[2] In the absence of proof, although a different system of jurisprudence may prevail, the general law of England will be applied—*e.g.*, in questions relating to lands in a colony[3]; and in the case of land in a particular district of a colony, into which the system prevailing generally in the colony has never been introduced, English law will be applied.[4] And generally, until foreign law (under which description colonial law is included) is proved to be different, there is a presumption that it is the same as that of England.[5]

When the parties to a contract reside in different countries in which different systems of law prevail, their intention is the true criterion to determine by what law its interpretation and effect are to be governed.[6]

As an alternative to proving foreign law by the evidence of an expert, 22 & 23 Vict. c. 63 provides for the remission of cases by courts in one part of Her Majesty's dominions for the opinion in law of a court

1 *Astley* v. *Fisher*, 6 C. B. 572. And see *In re Gillespie*, L. R. 16 Q. B. D. 702; *Hunt* v. *Fripp*, L. R. (1898) 1 Ch. 675.

2 *Donegani* v. *Donegani*, 3 Knapp, 63.

3 *Bentinck* v. *Willink*, 2 Hare, 1.

4 *Lindsay* v. *Oriental Bank Corporation*, 13 Moo. P. C. C. 401. The right to treat rent as a specialty debt is incident to privity of estate—a doctrine connected with the old feudal tenure, and with the ancient right of the landlord to come on the land and oust the tenant—and not to privity of contract. It does not therefore apply to the case of lands out of England: *Vincent* v. *Godson*, 4 De G. M. & G. 546. The English common law of real property is of no force in Jersey: *De Carteret* v. *Bandains*, L. R. 11 App. p. 219.

5 *Smith* v. *Gould*, 4 Moo. P. C. C., 21; *Lloyd* v. *Guibert*, L. R. 1 Q. B. p. 129. How proved, see *In the Goods of Bonelli*, L. R. 1 P. D. 69; 45 L. J. P. D. 42. In the Admiralty Court the strictness of the Courts of common law as to proof was not adhered to: *The Peerless*, 1 Lush. 30.

6 *Spurrier* v. *La Cloche*, L. R. (1902) A. C. 446.

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in any other part thereof[1]; and 24 Vict. c. 11 enacts that Superior Courts within Her Majesty's dominions may in any action remit a case to the court of any foreign State with which Her Majesty may have made a convention for that purpose to ascertain the law of such State.[2]

It is a settled constitutional principle that, although the Crown may by its prerogative establish courts to proceed according to the common law, yet it cannot create any new court to administer any new law; the erection of a new court with a new jurisdiction cannot be without an Act of Parliament.[3]

The King's prerogative extends to the colonies, and, when not expressly limited by local law or statute, is as extensive in the colonies as in Great Britain.[4] Every right which He possesses by forfeiture extends as much to the colonies as to England. Therefore by the law as it existed prior to the abolition of forfeiture for felony in 1870 [5] H.M. was entitled to all the goods of a felon convicted in a colony.[6] And the prerogative gives a colonial Government priority in bankruptcy in respect of a simple contract debt.[4] So also, in the case of a prerogative administration taken out before 1857 from the Archbishop of Canterbury, it was laid down that it extends to all personal property of British subjects dying intestate in foreign countries or in the colonies, wherever the property might be situate at the time of death.[7] The provisions of the Bankruptcy Act, 1883,[8] have not been incorporated into the Companies Act, 1862, by s. 10 of the Judicature Act, 1875, so as to bar the prerogative right of the Crown

1 See *post*, chap. iv.; *Lord* v. *Colvin*, 29 L. J. Ch. 297, 1 Drew. & Sm. 24.
2 See *post*, chap. iv.
3 3 Moo. P. C. C., N. S., p. 152.
4 *Liquidators of Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. 437.
5 33 & 34 Vict. c. 23.
6 *In re Bateman's Trust*, L. R. 15 Eq. 355.
7 *Whyte* v. *Rose*, 3 Q. B. 507; 11 L. J. Ex. 457. Now see the Probate Act of 1857 (20 & 21 Vict. c. 77), s. 4.
8 46 & 47 Vict. c. 52.

to issue process and obtain payment in full of a debt due from a company in liquidation. And this right may be exercised in the colonies.[1] And where a ship is the property of the Crown, no action *in rem* or otherwise for salvage can be maintained.[2]

Every colony is of course subject to the paramount legislative authority of Parliament.[3] This is expressly asserted as regards conquered colonies in the first proposition laid down by Lord Mansfield in *Campbell v. Hall*[4]: "A country conquered by the British arms becomes a dominion of the King in right of his Crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain." Sir T. Erskine May declares in broader language that "the legislative authority of Parliament extends over the United Kingdom and all its colonies and foreign possessions, and there are no other limits to its power of making laws for the whole empire than those which are incident to all sovereign authority—the willingness of the people to obey or their power to resist. . . . For some colonies the Queen in Council legislates, while others have legislatures of their own which propound laws for their internal government, subject to the approval of the Queen in Council; but these may afterwards be repealed or amended by statutes of the Imperial Parliament; for their legislatures and their laws are both subordinate to the supreme power of the mother country."[5] He instances the suspension of the Canadian constitution by 1 & 2 Vict. c. 9 and 2 & 3 Vict. c. 53; the abolition of slavery in all British possessions by 3 & 4 Will. 4, c. 73; and other cases. An alien friend, residing in Canada during the publication in England of a work composed by her, was adjudged entitled to copyright under the Imperial

1 *In re Oriental Bank Corporation, Ex parte The Crown*, L. R. 28 Ch. D. 643.
2 *Young* v. *S.S. Scotia*, L. R. (1903) A. C. 501.
3 Clark's Colonial Law, 10; 1 Blackst. by Harg. 108.
4 20 St. Tr. col. 322.
5 Parliamentary Practice, 40.

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Copyright Act, 5 & 6 Vict. c. 45, although she was not so entitled by the Canadian Copyright Act—the Imperial Act, by ss. 2 and 29, extending to all the colonies, settlements, and possessions of the Crown now and hereafter.[1] But the Imperial Fine Arts Copyright Act, 1862, does not extend to any part of the British dominions outside the United Kingdom.[2]

The Act to remove doubts as to the validity of colonial laws[3] enacts (s. 2) that "any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain void and inoperative."

A debt due, so far as it is charged upon estate within the colony and gives the creditor a real and preferable interest in that estate, is property of the creditor in the colony.[4]

Judicial notice will be taken of the fact that a colony is abroad; as in the case of the colony of Victoria.[5] And for the purposes of the Divorce Court the colonies are foreign countries.[6]

British subjects cannot take possession in their own right of a foreign country. No colony can be settled without authority from the Crown.[7] A country con-

1 *Low* v. *Routledge*, L. R. 1 Ch. App. 42. *Cf. Low* v. *Ward*, L. R. 6 Eq. 415.
2 *Grave* v. *Gorrie*, L. R. (1903) A. C. 496.
3 28 & 29 Vict. c. 63.
4 *Walsh* v. *Reg.*, L. R. (1894) A. C. 144.
5 *Cooke* v. *Wilson*, 1 C. B. N. S. 153; 26 L. J. C. P. 15.
6 *Firebrace* v. *Firebrace*, L. R. 4 P. D. 63; 47 L. J. P. D. & A. 41.
7 *Per* Lord Mansfield, 20 St. Tr. col. 287. See *ante*, p. 11, for the government of settlements in places where there is no formally constituted authority.

quered by the British arms becomes a dominion of the King in right of his Crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain.[1]

An alien has no legal right, enforceable by action, to enter British territory.[2]

The sway exercised by Sir James Brooke over the territory of Sarawak in the Island of Borneo presents a problem of some interest in connection with this topic. Sir James Brooke, commonly known as Rajah Brooke, was a British subject who in 1842 received from the Sultan of Borneo a grant of the government of Sarawak subject to a tribute. In 1853 the tribute was remitted, and power was given to Rajah Brooke to nominate his successor, who, as well as each following successor, was to pay the Sultan £1000 on his accession or on the demise of his predecessor. In 1855 a commission was sent out by the English Government to Singapore to inquire into the position of Sir James Brooke in Borneo. On that occasion the exact nature of the relation between him and the Sultan of Borneo could not be elucidated, owing to the fact that the document containing the grant from the latter to the former was not brought forward. But one of the Commissioners stated in his report that, in the face of the precedent of the assertion of the sovereignty of the English Crown over the territorial possessions of the East India Company set forth in 53 Geo. 3, c. 155, s. 95,[3] he should not be inclined to uphold the opinion that Sir James Brooke or any other British subject could attain to the position of being an independent ruler of a foreign territory.[4] This difficulty prevented the British Government for

1 20 St. Tr. col. 323. And see *The Foltina*, 1 Dods. 450.

2 *Musgrove* v. *Chun Teeong Toy*, L. R. (1891), A. C. 272.

3 "Provided always and be it further enacted that nothing in this Act contained shall extend or be construed to extend to prejudice or affect the undoubted sovereignty of the Crown of the United Kingdom of Great Britain and Ireland in and over the said territorial acquisitions."

4 Report of Commissioners, 1855, p. 19.

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some years from sending out any official to protect the interests of Englishmen in Sarawak. But at length they yielded to the persistent arguments of Sir James Brooke and his friends; and in January 1864 a British Consul was appointed to Sarawak,[1] and obtained his *exequatur* through the instrumentality of Sir James Brooke, the ruler of that territory. In August 1867, the Consul having resigned the previous year, an unpaid British Vice-Consul was appointed to Sarawak, and obtained his *exequatur* also from the ruling authorities of that settlement. The Vice-Consul resigned in June 1872; and in October 1882, Mr. Peter Leys was appointed Consul.[2] In 1888 Sarawak was placed under British protection.

1 *London Gazette*, 19 Jan. 1864.
2 *London Gazette* of date. See now the British Settlements Act, 1887 (50 & 51 Vict. c. 54), *ante*, p. 11.

CHAPTER II.

THE EXECUTIVE.

Section I.—The Governor.

A.—*Nature of his Office, Powers, and Duties.*

THE authority of the Queen in the colonies is represented by a Governor, Governor-General, or Governor-in-Chief.[1] He is appointed by His Majesty's Commission, which confers upon him his powers, and with his instructions defines generally his duties. The Governor of a colony (in ordinary cases) cannot be regarded as a Viceroy; nor can it be assumed that he possesses general sovereign power. His authority is derived from his commission, and limited to the powers thereby expressly or impliedly entrusted to him.[2]

The titles Governor-in-Chief and Governor-General are given to governors whose commissions comprise several distinct colonies.[3] Such Governments-in-Chief are:—

1. The Dominion of Canada, comprising the provinces of Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward's Island, Manitoba, North-West Territories, British Columbia, and Vancouver's Island.[4]

2. Jamaica, to which is attached Turks Islands.

3. The Windward Islands, composed of Grenada, St. Vincent, St. Lucia.

1 12 & 13 Vict. c. 96, s. 5; 26 & 27 Vict. c. 84, s. 1; &c.

2 *Musgrave* v. *Pulido*, L. R. 5 App. p. 111.

3 See Rules and Regulations for H.M. Colonial Service, Colonial Office List.

4 See British North America Act, 1867 (30 & 31 Vict. c. 3), and the amending Acts, 34 & 35 Vict. c. 28 and 38 & 39 Vict. c. 38.

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4. The Leeward Islands, composed of Antigua, St. Christopher's, Dominica, Nevis, the Virgin Islands, and Montserrat.

By the Interpretation Act, 1889,[1] the expression "Governor" in that and every subsequent Act is to mean, as respects Canada and India, the Governor-General, and to include any person who for the time being has the power of the Governor-General; and, as respects any other British possession, is to include the officer for the time being administering the government of that possession.

The Governor-in-Chief administers the government of every colony comprised within his command whenever he is present therein. During his absence the administration is carried on by a Lieutenant-Governor, appointed by the Crown, or a President of the Council or Administrator (in the West Indies).

In discussing the relation to the Crown of Lieutenant-Governors of Canadian Provinces the Judicial Committee in a recent case[2] expressed it as their opinion that "there is no constitutional anomaly in an executive officer of the Crown receiving his appointment at the hands of a governing body who have no powers and no functions except as representatives of the Crown. The act of the Governor-General and his Council in making the appointment is, within the meaning of the statute, the act of the Crown; and a Lieutenant-Governor, when appointed, is as much the representative of His Majesty for all purposes of provincial government as the Governor-General himself is for all purposes of Dominion government."

Governors are appointed during His Majesty's pleasure, but do not usually retain office longer than six years. In the event of a demise of the Crown,

1 52 & 53 Vict. c. 63, s. 18 (6).

2 *Liquidators of Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. p. 443.

their commissions remain in force until the expiration of eighteen months therefrom.[1]

The following is a summary[2] of the most important of a Governor's powers and duties, subject to the special law of each colony:—

1. He may pardon or respite criminals, and remit fines, penalties, or forfeitures accruing to the King. Transported convicts he may recommend to His Majesty for an absolute or conditional pardon.[3]

2. The moneys to be expended for the public service are issued under his warrant.

3. He grants licences for marriages, letters of administration, and probate of wills, unless other provision be made by charter of justice or local law; and in many cases presents to benefices of the Church of England in the colony.

4. He issues writs in the King's name for the election of representative assemblies and councils; convokes and prorogues legislative bodies, and dissolves those liable to dissolution.

5. He appoints, absolutely or temporarily and provisionally, to offices in the colony.

6. In colonies possessing responsible government he has, with his Council, the entire power to suspend or dismiss public servants holding during pleasure.[4] In other colonies he can suspend under certain regulations, and has a limited power of dismissal.

7. His assent to bills passed by the local legislature is necessary to their becoming law. But in certain cases—*e.g.*, matters concerning the currency, the army and navy, differential duties, foreign treaties, the pre-

1 1 Will. 4, c. 4, s. 2. See *Devine* v. *Holloway*, 14 Moo. P. C. C. p. 298.

2 See Rules and Regulations, C. O. List.

3 6 & 7 Vict. c. 7, s. 2; *Barnett* v. *Blake*, 2 Drew. & Sm. 117. By 5 Geo. 4, c. 84, s. 26, felons who have received from the Governor or Lieutenant-Governor of a colony a remission, either absolute or conditional, of the whole or a part of the term of their transportation, are protected in the enjoyment of property acquired since their conviction. See *Gough* v. *Davies*, 2 Kay & J. 623; 25 L. J. Ch. 677; *Fleming* v. *Smyth*, 12 Ir. Com. Law Rep. 404.

4 *Ex parte Robertson*, 11 Moo. P. C. C. 288. See *post*, p. 55.

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rogative, or rights of His Majesty's subjects not resident in the colony—he must reserve bills for the Royal assent, or assent to them with a clause suspending their operation till confirmed by the Crown.[1]

8. He must repel aggression, and endeavour to his utmost to suppress piracy.[2] Also he must direct his attention to the state of the militia and volunteers in the colony, and report periodically on the subject.

9. He may not leave the colony without His Majesty's permission, nor receive or give presents, nor forward articles for presentation to His Majesty.

10. In colonies without representative assemblies the initiation of law belongs in general to the Governor. In colonies having representative assemblies it is in many cases provided that the initiation of all measures for the appropriation of public money shall belong to the Governor.

In West Indian Islands, or African settlements forming part of any general government, every bill or draft ordinance must be submitted to the Governor-in-Chief before it receives the assent of the Lieutenant-Governor or Administrator.

The nature of a Governor's official position and authority generally was discussed at some length in the case of *Cameron* v. *Kyte*,[3] where the question was whether the Governor of the Colony of Berbice could of his own authority, without any special powers by his commission or instructions or by the laws of the colony, reduce the commission of the Vendue Master, an officer whose duty it was to sell all property sold by public auction. In that case the judgment of the Judicial Committee, after showing that the right to make such

1 And see Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 4. As to the Governor-General of Canada, see Todd's Parliamentary Government in the Colonies, pp. 83 *seqq.*

2 *Vide per* Willes, J., in *Phillips* v. *Eyre*, L. R. 6 Q. B. p. 15, as to the duty of a Governor in case of a rebellion. The doctrine of martial law was discussed before a Committee of the House of Commons appointed in 1849 to inquire into certain transactions in Ceylon.

3 3 Knapp, 332.

an order, if it existed at all, must under the circumstances of the case be implied from the nature of the office of Governor, proceeded as follows:[1] "If a Governor had, by virtue of that appointment, the whole sovereignty of the colony delegated to him as a Viceroy, and represented the King in the government of that colony, there would be good reason to contend that an act of sovereignty done by him would be valid and obligatory upon the subject living within his government, provided the act would be valid if done by the Sovereign himself, though such act might not be in conformity with the instructions which the Governor had received for the regulation of his own conduct. The breach of those instructions might well be contended, on this supposition, to be matter resting between the Sovereign and his deputy, rendering the latter liable to censure or punishment, but not affecting the validity of the act done. But if the Governor be an officer merely with a limited authority from the Crown, his assumption of an act of sovereign power, out of the limits of the authority so given to him, would be purely void, and the courts of the colony over which he presided could not give it any legal effect. We think the office of Governor is of the latter description; for no authority or *dictum* has been cited before us to show that a Governor can be considered as having a delegation of the whole Royal power in any colony, as between him and the subject, when it is not expressly given by his commission. And we are not aware that any commission to colonial Governors conveys such an extensive authority."

Apparently the non-objection on the part of the Crown to a notification or proclamation issued by a Governor of one of its ceded colonies does not imply that the Governor had authority in the subject of the proclamation; nor will its non-interference render the proclamation valid on the ground of acquiescence.[2]

1 3 Knapp, p. 343.

2 Ibid. p. 332.

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In the case of *Musgrave* v. *Pulido*,[1] an action against the Governor of Jamaica for damages for an unlawful seizure and detention at Kingston in Jamaica of a ship of which the plaintiff was the charterer, the principal decisions (including *Cameron* v. *Kyte*) upon the position of Governors of colonies were reviewed, and the result enunciated as follows[2]:—

"It is apparent from these authorities that the Governor of a colony (in ordinary cases) cannot be regarded as a Viceroy; nor can it be assumed that he possesses general sovereign power. His authority is derived from his commission, and limited to the powers thereby expressly or impliedly entrusted to him."

On the annexation of Pondoland to Cape Colony an Act was passed in the colony, No. 5 of 1894, which by s. 2 subjected the annexed territory to such laws, statutes, and ordinances as had already been therein proclaimed, and to such as after the annexation to the colony the Governor should from time to time by proclamation declare to be in force in such territories. Subsequently the Governor issued a proclamation to the effect that S. had rendered himself liable to arrest, and commanding the chief magistrate of Griqualand East to cause him to be forthwith arrested, and to detain him as long and under such conditions as to the Governor might appear necessary or expedient to the public order and safety. S. surrendered, and was placed in close confinement. No warrant for his arrest was issued other than the proclamation; no charge was made against him beyond vague allegations in the proclamation; nor was he brought before any tribunal. In affirming the order of the Supreme Court of the Colony for the immediate release of S. the Judicial Committee of the Privy Council, after stating that the Governor's only authority after the date of the Act was to add to the laws, statutes, and ordinances already

[1] L. R. 5 App. 102. [2] Ibid. p. 111.

proclaimed and in force at the date of the Act such laws, statutes, and ordinances as he "shall from time to time by proclamation declare to be in force in such territories," insisted that those words did not impart any power in the Governor to make "new laws," in the widest sense of the term; they did no more than authorise him to transplant to the new territories and enact there laws, statutes, and ordinances which already existed and were operative in other parts of the Colony. They added that the proclamation exceeded any delegated authority possessed by the Governor in two particulars, which constituted its leading features: first, it was a new and exceptional piece of legislation differing entirely in character from any of the laws, statutes, and ordinances he was authorised to proclaim; secondly, it in substance repealed the whole of the existing law with respect to criminal proceedings in so far as the respondent was concerned.[1]

In the matter of a *Special Reference from the Bahama Islands*[2] the Privy Council held that the commission of the Governor empowered him to exercise the Royal Prerogative to remit sentences merely of a punitive character for contempt of court.

The Governor of a colony, being the person to whom the general management of such colony is entrusted, is the person entitled to the bounties payable in respect of a seizure of slaves, even though he is absent from the colony at the time the seizure is made.[3]

The jurisdiction conferred by the Naturalisation Act of 1870[4] on the Secretary of State in the United Kingdom, in respect of the grant of a certificate of readmission to British nationality, may be exercised, in the case of any statutory alien being in any British

1 *Sprigg* v. *Sigeau*, L. R. (1897) A. C. 238; 66 L. J. P. C. 44.
2 L. R. (1893) A. C. 138; 62 L. J. P. C. 79 *nom. In re Moseley*.
3 *In re Seizure of Slaves at Sierra Leone*, Br. & Lush. Adm. R. 148; 32 L. J. Adm. 189.
4 33 & 34 Vict. c. 14.

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possession, by the Governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.[1]

The Extradition Acts of 1870 and 1873 extend to the colonies.[2] The requisition by a foreign State for the surrender of a fugitive criminal in a colony may be made to the Governor of the colony, in whom are vested all the powers and authorities in relation to the surrender exercisable by a police magistrate or by a Secretary of State in England.[3] Under the Fugitive Offenders Act[4] also, which creates an intercolonial system of extradition, the Governor of a colony is empowered to endorse warrants issued in other parts of Her Majesty's dominions for the apprehension of fugitives in his colony[5]; and to order by warrant under his hand the return of such a fugitive on the expiration of fifteen days after his committal to prison by a magistrate, or after the final decision of a Superior Court on a writ of *habeas corpus* or other like process with reference to the fugitive, to the part of Her Majesty's dominions from which he is a fugitive, to be dealt with there in due course of law.[6]

By the Territorial Waters Jurisdiction Act[7] no proceedings for the trial and punishment of a person not a subject of Her Majesty, charged with any offence declared by the Act to be within the jurisdiction of the Admiral, shall be instituted in any of the dominions of Her Majesty out of the United Kingdom except with the leave of the Governor thereof, and on his certificate that it is expedient that such proceedings should be instituted.[8] Production of a document at the trial purporting to be signed by the

1 33 & 34 Vict. c. 14, s. 8.
2 33 & 34 Vict. c. 52, s. 17; 36 & 37 Vict. c. 60, s. 1. See *post*, chap. iii. sect. 3.
3 33 & 34 Vict. c. 52, s. 17. 4 44 & 45 Vict. c. 69.
5 S. 3. 6 S. 6. 7 41 & 42 Vict. c. 73. 8 S. 3.

Governor, and containing such consent and certificate, is to be sufficient evidence of the consent and certificate for all the purposes of the Act.[1]

His Majesty may by Order in Council vest any fortifications, works, buildings, or land in any colony, held in trust for the defence of that colony, in the Governor of the colony for the time being, on a representation of a Secretary of State and of the Commissioners of the Treasury that it is expedient so to do.[2] Every such representation proposed to be made to His Majesty is to be laid before both Houses of Parliament and to lie upon the table for not less than forty days before it is submitted to His Majesty.[3] Vesting Orders in Council have been made in the case of the following colonies:

Mauritius, June 26, 1879;
Tasmania, March 18, 1880;
Queensland, March 2, 1881;
Western Australia, July 15, 1881;
Cape of Good Hope, May 3, 1882;
Canada, August 18, 1882.

The Governor of a colony may authorise persons to attest soldiers.[4] And where a court-martial is held in a colony, and there is no superior authority in a colony to confirm the findings of sentences of the court-martial, the Governor has power to confirm them.[5] He is also a qualified officer to confirm them when he is in command of the regular forces of the colony.[6] He must also approve of sentences of death passed by court-martial in the colony,[7] and of sentences of penal servitude so passed on conviction of manslaughter or rape, or any other civil offence under the section[8] of the Act relating to the trial by court-martial of civil offences.[9] He has also to arrange for the reception in prison in the colony of military prisoners, deserters, and absentees without leave.[10] He

1 41 & 42 Vict. c. 73, s. 4. 2 40 & 41 Vict. c. 23, s. 1. 3 Ibid.
4 44 & 45 Vict. c. 58, s. 94, sub-s. 1. 5 S. 54, sub-s. 4.
6 S. 54, sub-s. 7. 7 S. 54, sub-s. 7.
8 Apparently s. 41. 9 S. 54, sub-s. 9. 10 Ss. 131, 132.

may also by proclamation declare the forces in the colony temporarily subject to the Army Act.[1]

In the event of a vacancy in the office of judge, registrar, marshal, or other officer of any Vice-Admiralty Court in a British possession, the Governor may appoint a fit person to fill the vacancy until an appointment is made by the Admiralty.[2] And whenever there is not a formally appointed vice-admiral in a British possession or any place therein, the Governor of the possession shall be *ex-officio* vice-admiral thereof.[3]

The Governor of a colony having constitutional government has no power to add without limit to the judges of the Supreme Court without express Parliamentary sanction.[4]

By the Merchant Shipping Act, 1894,[5] the Governor of a British possession may by proclamation

(*a*) determine what shall be deemed for the purpose of Part III. of the Act (Passengers and Emigrant Ships) the length of the voyage of any ship carrying steerage passengers from any part in that British possession to any other part; and

(*b*) fix dietary scales for the steerage passengers during the voyage; and

(*c*) declare what medical stores are necessary for the medical treatment of the steerage passengers during the voyage.

Every such proclamation is to have effect within and without the British possession. The Governor may also authorise persons to survey emigrant ships sailing from that possession as required by the Act in the case of emigrant ships sailing from the British Islands. And he may authorise a competent person to act as medical practitioner on board an emigrant ship proceeding on a colonial voyage.[6]

1 S. 189, sub-ss. 2, 3, 4. 2 53 & 54 Vict. c. 27, s. 9 (2*b*). 3 S. 10.
4 *Buckley* v. *Edwards*, L. R. (1892) A. C. 387; 61 L. J. P. C. 64 *nom. A.-G. for New Zealand* v. *Edwards*.
5 57 & 58 Vict. c. 60. 6 S. 366.

Distressed seamen found abroad may be relieved and sent home at the public expense by His Majesty's Governors.[1]

The Governor may, with the approval of one of His Majesty's principal Secretaries of State, make regulations for granting certificates of registry of ships not exceeding sixty tons burden terminable at the end of six months.[2]

The powers and authorities vested in the Commissioners of Customs with regard to the Customs, or to trade and navigation, or the registry of ships or any interest therein, in any of the British possessions abroad, are vested in the Governor, Lieutenant-Governor, or other person administering the government of any such possession.[3] He may also approve ports of registry.[4]

The Governor of a British possession may

(*a*) appoint medical inspectors of seamen, charge fees for medical examinations made by them, and determine their remuneration; and

(*b*) make regulations, subject to the laws of the possession, as to the supply in the possession of anti-scorbutics for the use of ships, and the anti-scorbutics supplied accordingly are to be deemed fit and proper for the use of ships.[5]

The Governor of a colony has no power to commit a non-accounting churchwarden.[6]

In *Cloete* v. *The Queen*[7] and *Gahan* v. *Lafitte*[8] the capricious and indiscreet exercise of their powers by Governors of colonies was restrained by the Privy Council.

In *The Queen* v. *Clarke*[9] and *The Queen* v. *Hughes*[10] the powers of the Governors of New Zealand and of

1 57 & 58 Vict. c. 60, s. 191.
2 57 & 58 Vict. c. 60, s. 90.
3 39 & 40 Vict. c. 36, s. 149; 57 & 58 Vict. c. 60, s. 89.
4 Ibid.
5 57 & 58 Vict. c. 60, s. 205.
6 *Basham* v. *Lumley*, 3 C. & P. 489.
7 8 Moo. P. C. C. 484.
8 3 Moo. P. C. C. 382.
9 7 Moo. P. C. C. 77.
10 L. R. 1 P. C. 81.

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South Australia to grant waste lands in those colonies respectively were discussed.

Provision is made for retiring pensions for Governors by 28 & 29 Vict. c. 113, amended by 35 & 36 Vict. c. 29; and the Pensions (Colonial Service) Act, 50 & 51 Vict. c. 13, by s. 5 expressly applies the Pension Acts to Cyprus and H.M.'s High Commissioner there. By 57 & 58 Vict. c. 17 no person employed in the public service of any colony other than those in the schedule to the Act[1] is entitled to be absent from the colony except in accordance with the rules relating to leave of absence framed by the Secretary of State. As to Governors of the Isle of Man see 39 & 40 Vict. c. 43, amended by 45 & 46 Vict. c. 46.

B.—*Liability to answer for his acts.*

The liability of the Governor of a colony to answer before the courts of law for his acts may conveniently be discussed under two heads.

I. Liability in civil actions.

Here two questions arise in reference,—first, to the court in which the action may be brought; and, secondly, to the nature of the cause of action.

1. (*a*) It is well established by the case of *Hill* v. *Bigge*[2] that a Governor may be sued in the courts of his own government. That was an action against the Governor of Trinidad in the court of first instance of that island upon a bond given by the defendant to the plaintiffs in London before he became Governor. The defence was that the defendant was Governor of Trinidad, and therefore could not be sued in the courts of the island. It was argued that his official position exempted him from the jurisdiction of the

[1] Dominion and Provinces of Canada, Newfoundland, Cape Colony, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, New Zealand. [2] 3 Moo. P. C. C. 465.

courts of the island, by the process of which he might otherwise even be arrested on a *capias*, if judgment were obtained against him; and his freedom in that respect was likened to that of the sovereign from actions by the subject. Lord Brougham, however, in delivering the opinion of the Judicial Committee, laid it down that the Governor "does not even represent the Sovereign generally, having only the functions delegated to him by the terms of his commission, and being only the officer to execute the specific powers with which that commission clothes him."[1] His lordship pointed out that the liability to be taken in execution was not the necessary consequence of his being liable to have a judgment against him, the privilege from legal process then still existing in certain persons not protecting them from suits. The decision of the court of first instance in Trinidad was therefore affirmed on the principle that the Governor of a colony under the commission usually issued by the Crown cannot claim, as a personal privilege, exemption from being sued in the courts of the colony.[2]

(*b*) On the other hand, in *Fabrigas* v. *Mostyn*[3] the question was, whether the Governor of a colony could be sued in England for acts committed in his colony. The action was brought in the Common Pleas at Westminster by a native of Minorca against the Governor of that island for assault and false imprisonment. It was argued on the defendant's behalf that the action could not be brought in an English Court against the defendant, he being the Governor of a colony. Lord Mansfield held that the action did "most emphatically lie"; though some of the language he used in reference to the exemption of a Governor from all suits in the courts of his government must be allowed to have been too broad; and his *dictum*, that the Governor is in the nature of a Viceroy,

1 3 Moo. P. C. C. p. 476.
2 See L. R 5 App. p. 107.
3 1 Cowp. 161; 20 St. Tr. 81.

and that therefore during his government no action, civil or criminal, will lie against him in the courts of his government, was dissented from by Lord Brougham in *Hill* v. *Bigge*[1] as not necessary to the decision.

Glynn v. *Houston*[2] was an action for assault and false imprisonment brought in the Common Pleas at Westminster against the Lieutenant-Governor of Gibraltar by a British merchant resident there. On motion for a new trial the only question argued was whether the evidence was sufficient to warrant the verdict, the liability of the defendant in that court not being disputed.[3]

In *Wall* v. *Macnamara*,[4] which was an action against the Governor of Senegambia for false imprisonment, the principle on which should be tried the legality of acts done in the exercise of their duty by military officers abroad was discussed.

2. Secondly, as to the nature of the cause of action. The cases already cited sufficiently illustrate a Governor's liability for acts unconnected with his official capacity. The question whether he can be held liable for acts of State in his capacity of Governor has been raised, but has not yet received a direct answer in any of the courts. *Tandy* v. *The Earl of Westmoreland*[5] was an action against the Lord-Lieutenant of Ireland "for an act done in his politic capacity." In that case the Lord Chief Baron of Ireland (Lord Avonmore) declared that no man could maintain an action against a Lord-Lieutenant for an act of State during his government.[6]

That case was relied upon by the Court in *Luby* v. *Lord Wodehouse*,[7] where it was decided that no action was maintainable against a Lord-Lieutenant of Ireland in an Irish court during his continuance in office for any act done by him *qua* Lord-Lieutenant. In

1 3 Moo. P. C. C. 465.
2 2 M. & G. 337.
3 And see *Campbell* v. *Hall*, 20 St. Tr. 239; *Bryan* v. *Arthur*, 11 A. & E. 108; *Smith* v. *Nicholls*, 5 Bing. N. C. 208.
4 Cited 1 T. R. 536.
5 27 St. Tr. 1246.
6 Ibid. col. 1264.
7 17 Ir. C. L. R. 618.

delivering judgment the Court referred apparently with approval to Lord Mansfield's *dictum* in *Fabrigas* v. *Mostyn* as to the non-liability of a Governor in the courts of his government. The disapproval in *Hill* v. *Bigge* is not irreconcilable with the approval in *Luby* v. *Lord Wodehouse*. *Hill* v. *Bigge* only decided that an action could be brought against a Governor in the courts of his government for a cause unconnected with his political capacity; while *Luby* v. *Lord Wodehouse* decided that an action could not be brought in Ireland against the Lord-Lieutenant of Ireland for an act done in his political capacity.

Both *Tandy* v. *The Earl of Westmoreland* and *Luby* v. *Lord Wodehouse* were mentioned in the judgment in *Musgrave* v. *Pulido*,[1] and it was remarked that in these cases the Lord-Lieutenant appears to have been regarded as a Viceroy. In both the facts were brought before the Court, and in both it appeared that the acts complained of were political acts done by the Lord-Lieutenant in his official capacity, and were assumed to be within the limits of the authority delegated to him by the Crown. The Courts appear to have thought that under these circumstances no action would lie against the Lord-Lieutenant in Ireland; and upon the facts brought to their notice it may well be that no action would lie against him anywhere.

In the same case occur the following remarks with reference to a Governor not regarded as a Viceroy: "If the Governor cannot claim exemption from being sued in the courts of the colony in which he holds that office, as a personal privilege, simply from his being Governor, and is obliged to go further, his plea must then show by proper and sufficient averments that the acts complained of were acts of State policy within the limits of his commission, and were done by him as the servant of the Crown, so as to be, as they are sometimes shortly termed, acts of State. A plea, however,

[1] L. R. 5 App. p. 111.

disclosing these facts would raise more than a question of personal exemption from being sued, and would afford an answer to the action not only in the courts of the colony, but in all courts." [1]

In a subsequent part of the same judgment [2] it is said :—" Let it be granted that for acts of power done by a Governor under and within the limits of his commission he is protected because in doing them he is the servant of the crown and is exercising its sovereign authority ; the like protection cannot be extended to acts which are wholly beyond the authority confided to him. Such acts, though the Governor may assume to do them as Governor, cannot be considered as done on behalf of the Crown, nor to be in any proper sense acts of State. When questions of this kind arise, it must necessarily be within the province of municipal courts to determine the true character of the acts done by the Governor ; though it may be that, when it is established that the particular act in question is really an act of State policy done under the authority of the Crown, the defence is complete, and the Courts can take no further cognizance of it."

In an action against the Governor of Jamaica for assault and false imprisonment in suppressing a rebellion in that colony [3] a colonial Act of indemnity was set up as a defence. " That such an Act was thought to be necessary, and that it was alone relied on as a defence to the action, raises a strong presumption that it had been thought that the action might but for this Act have been maintained. It is to be observed, however, that the facts of the rebellion and its suppression were averred in the plea by way of introduction to the Act of Indemnity ; and Mr. Justice Willes, in delivering the judgment of the Exchequer Chamber, after saying that the Court had discussed the validity of the defence upon the only question argued by counsel,

1 L. R. 5 App. p. 107. 2 Ibid. p. 111.
3 *Phillips v. Eyre*, L. R. 4 Q. B. 225 ; 6 Q. B. 1.

viz., the effect of the Colonial Act, adds:[1] 'but we are not to be understood as thereby intimating that the plea might not be sustained upon more general grounds, as showing that the acts complained of were incident to the enforcement of martial law.'"

Mr. Westlake, in his Private International Law,[2] cites this case as exemplifying the principle that no act can be treated in England as a wrong on the part of any defendant, in whom it is not a wrong by the law of the country where it was done, whether the law did not regard him as a wrongdoer at the time, or whether he has since been able to justify it in that country by the enactment of an indemnity.

The tendency of the decisions therefore seems to be towards exempting the Governors of colonies from liability to answer in civil actions for acts of State in the courts both of their governments and of England.

There is no ground whatever for saying that the Governor of a colony cannot give his official sanction to a legislative measure in which he may be individually interested. It might as well be asserted that the Sovereign of these realms could not give assent to a Bill in Parliament in which the Sovereign was personally concerned.[3]

In an action for libel against the Governor of a colony he cannot be compelled to produce copies of despatches, reports, and other communications that have passed between himself, as Governor, and H.M.'s Secretary of State for the Colonies, or between himself, as Governor, and the Royal Commissioner appointed to inquire into the affairs of the colony, or between the Secretary of State and such a Royal Commissioner, such documents having been acquired and held by him in his capacity of Governor of one of H.M's colonies.[4]

1 L. R. 5 App. p. 110.
2 4th ed. p. 259.
3 *Phillips* v. *Eyre*, L. R. 4 Q. B. p. 244.
4 *Hennessy* v. *Wright*, L. R. 21 Q. B. D. 509.

CHAP. II. Sect. 1. The Governor. B. Liability for his acts. 1. In civil actions.

Communications between the Governor of a colony and his Attorney-General on the condition of the colony or the conduct of the officers are privileged from revelation in an action against the Governor for libel.[1] So also are communications between the Governor of a colony and a military officer under his authority;[2] but the officer in question may be asked in general terms, in an action against the Governor, whether he did not act by the direction of the defendant.[3]

A colonial government is not a corporation and cannot be effectually served with a writ, nor will an order for substituted service be made.[4] But under the New South Wales Act, 39 Vict. No. 38, the government of that colony is liable to be sued in an action of tort.[5] So also the Government of the Straits Settlements under the Crown Suits Ordinance Act, 1876.[6] By the New Zealand Act, 35 Vict. c. 49, claims against His Majesty arising in that colony may be preferred by Petition of Right.[7] Provision is made for suits by or against the Government of Grenada by Ordinances 16 of 1882 (ss. 358–364) and 28 of 1896 (ss. 13, 14).

2. In criminal proceedings.

II. Liability to criminal proceedings for acts committed in his government.

The Act known as the Governors' Act, 11 & 12 Will. 3, c. 12, enacted that if any governor, lieutenant-governor, or commander-in-chief of any plantation or colony within H.M.'s dominions beyond the seas shall . . . be guilty of oppressing any of H.M.'s subjects beyond the seas within their respective commands, or shall be guilty of any other crime or offence contrary to the laws of this realm or in force within their respective governments or commands, such oppressions,

1 *Wyatt* v. *Gore*, Holt, N. P. R. 299.
2 *Cooke* v. *Maxwell*, 2 Stark. R. 183.
3 Ibid, *per* Bayley, J.
4 *Sloman* v. *Governor and Government of New Zealand*, L. R. 1 C. P. D. 563.
5 *Farnell* v. *Bowman*, L. R. 12 App. 643.
6 *A.-G. of Straits Settlements* v. *Wemyss*, L. R. 13 App. 192.
7 See *Reg.* v. *Williams*, L. R. 9 App. 418.

crimes, or offences shall be inquired of, heard, and determined in H.M.'s Court of King's Bench in England, or before such commissioners and in such county as shall be assigned by H.M.'s commission.

This Act was extended by 42 Geo. 3, c. 85, to all persons employed in H.M.'s service in any civil or military capacity out of Great Britain guilty of any crime, misdemeanour, or offence in the execution or under colour or in the exercise of any such employment. It, however, only provided for trial in the King's Bench in England. The latter Act does not extend to felonies, the provision therein for prosecution by way of information by the Attorney-General being interpreted to show that felonies were not contemplated by it, that mode of proceeding not being appropriate to them.[1]

In 1802 Governor Wall was tried at the Old Bailey for the murder of a soldier by excessive flogging at Goree, an island off the coast of Africa, where the accused was at the time Governor.[2] That prosecution was conducted under 33 Hen. 8, c. 23,[3] which empowered the King's Council to issue a commission of oyer and terminer for the trial in any county of murder committed within or without the King's dominions. Governor Wall was found guilty and executed.

In 1804 General Picton was indicted for having caused Luisa Calderon, a mulatto, to be tortured in the island of Trinidad, of which he was at the time Governor, in order to induce her to make a confession concerning a robbery committed upon her master.[4] The proceedings spread over six or eight years. The defendant availed himself of the second section of 42 Geo. 3, c. 85, to obtain from the King's Bench a *mandamus* to the Court and Governor of the island to

1 *Rex* v. *Shawe*, 5 M. & S. 403. 2 28 St. Tr. 51.
3 Repealed by 9 Geo. 4, c. 31, s. 1, and 9 Geo. 4, c. 74, s. 125.
4 30 St. Tr. 225.

examine persons as to the laws and usages of the island and the proceedings that had been had against Luisa Calderon, and transmit the proofs to England. The case was twice presented to a jury; and on the second occasion a special verdict was found setting out the facts at great length, and submitting to the judgment of the Court of King's Bench whether upon them the defendant was guilty or not guilty of the charge against him. A prolonged argument ensued upon the question, amongst others, whether the Spanish law allowing torture continued to exist after the conquest of the island by England; the counsel for the prosecution contending that it did not, as being contrary to the fundamental principles of the English constitution. The Court postponed giving judgment; and some time afterward respited the defendant's recognizance until they should further order. No further proceedings were taken; and in 1815 General Picton fell at the battle of Waterloo. A note to the report of the case mentions that it was thought by the Bar that, had the opinion of the Court been delivered, judgment would have been given against General Picton; but that upon a consideration of the merits, it would have been followed by a punishment so slight and so little commensurate with the magnitude of the questions embraced by the case, as to have reflected but little credit upon the prosecution.[1]

The above-mentioned statutes of 11 & 12 Will. 3, c. 12, and 42 Geo. 3, c. 85, received discussion in the *Queen* v. *Eyre*,[2] where a *mandamus* to a metropolitan police magistrate was applied for, directing him to hear the evidence in certain charges preferred against the defendant, and to proceed thereon according to law. The defendant had been Governor of Jamaica in 1865; and he having returned to England, and being within the jurisdiction of the magistrate, application was made for warrants or summonses charging him

1 30 St. Tr. col. 955. 2 L. R. 3 Q. B. 487.

with having, while Governor of Jamaica, illegally proclaimed martial law, and with certain other misdemeanors committed as Governor of the island. On argument the Queen's Bench decided that an offence under the statutes above mentioned was an offence committed on land beyond the seas, for which an indictment might legally be preferred in any place in England, within section 2 of 11 & 12 Vict. c. 42; that that section and the other enactments of the same statute, as to preliminary proceedings before any magistrate in whose jurisdiction the accused might be, applied to charges under the other two statutes; and that the Court of Queen's Bench, where the trial is by them directed to be had, was included in the term "next court of oyer and terminer" in section 20 of the statute of Victoria.

Breaches of official trust, as presently defined, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined either in the place where they were committed, or in England; and the Act 42 Geo. 3, c. 85, is to apply to such offences as if they were mentioned therein.[1] Any person who, by means of his holding or having held an office under Her Majesty the Queen, lawfully or unlawfully obtains possession of or control over any document, sketch, plan or model, or acquires any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, is guilty of a breach of official trust.[2]

[1] 52 & 53 Vict. c. 52, s. 6. [2] Ibid. s. 2.

Sect. 2. The Executive Council.

The Governor is assisted in performing his duties by an Executive Council, the composition and appointment of which varies as the colony enjoys responsible government or not.

[1] In colonies where responsible government does not exist the Executive Council consists of the principal officers of the colony with or without a certain number of unofficial members. They are appointed by the Governor's instructions, or by warrant from the Crown, and can be dismissed by the Crown alone, the Governor having merely a power of suspension.

In colonies possessing responsible government the Governor has the power to appoint or remove members of the Executive Council, it being understood that those who have lost the confidence of the legislature will resign or discontinue to exercise their functions, analogously to the usage in the United Kingdom.[2]

In some cases the Governor can only act with the advice of the Executive Council; but, generally speaking, he is not absolutely precluded from acting without it if the public interest requires him to do so. But he must in such case conform to the special rules in his instructions.

In the West India colonies possessing representative assemblies the Executive Council sits in some cases with the Governor as a Court of Error.

The statute 22 Geo. 3, c. 75, gives power[3] to the Governor and Council of a colony or plantation to remove any person from his office in the colony for absence without reasonable cause or neglect or misbehaviour. This power was decided by the Judicial Committee in *Willis* v. *Sir George Gipps*[4] to apply to

1 See Rules and Regulations, Colonial Office List.

2 For distinction between the Ministry and the Executive Council in colonies under responsible government, see Todd's Parliamentary Government in the Colonies, pp. 37–39, 42.

3 S. 2. 4 5 Moo. P. C. C. 379.

judicial offices, and therefore to be exercisable in the case of a Judge of the Supreme Court of New South Wales. But in that particular case they considered that the Governor and Council ought to have given the Judge some opportunity of being previously heard against the motion, and on that ground reversed the order of amotion.

This decision was approved in *Montagu* v. *Lieutenant-Governor of Van Diemen's Land*,[1] where the appellant had had full notice of the charges against him and had defended himself; and it appearing there were sufficient grounds for the amotion, the Judicial Committee declined to recommend Her Majesty to reverse the order, notwithstanding a slight irregularity in the proceedings in which it was made.

In *Ex parte Robertson*[2] the Judicial Committee refused to consider an appeal against the amotion by the Governor-General and Executive Council of New South Wales of a Commissioner of Crown lands in that colony, on the ground that they did not enter into the consideration of such acts as were done by the Governor and Council of a colony in the exercise of the power and authority committed to them, whereby they dismissed persons from holding situations in that colony, they holding them not by any patent right, but simply and only during the pleasure of the Governor.

A Colonial Government is on the same footing as the Home Government as to the employment and dismissal of servants of the Crown; in the absence of special contract they hold their offices during the pleasure of the Crown.[3] The Regulations in the Colonial Office list are merely directions given by the Crown to Governments of Crown Colonies for general guidance; they do not constitute a contract between

1 6 Moo. P. C. C. 489. 2 11 Moo. P. C. C. 288.
3 *Shenton* v. *Smith*, L. R. (1895) A. C. 229; 64 L. J. P. C. 119. Cp. *Dunn* v. *Reg.* L. R. (1896) 1 Q. B. 116.

CHAP. II. Sect. 2. The Executive Council.

the Crown and its servants; on the contrary, they are alterable from time to time without assent on the part of Government servants.[1] But the power of the Crown to dismiss at pleasure may be restricted by statute, as by the New South Wales Civil Service Act of 1884.[2] In 1895 the Public Service Act of the same Colony, 59 Vict. c. 25, was passed, which by s. 58 restored to the Crown the right or power to dispense with the services of any person employed in the public service. It was held, however, not to be retrospective in its operation, and not applicable to a person who had entered the Government service in 1885 during the period when the Act of 1884 was in force, but had ceased to be a Government servant in June 1895 before the Act of 1895 had been passed and the power of summary dismissal had been given back to the Crown.[3] The Act of 1884, however, was held not to have taken away the right of the Crown to abolish a civil office, and that without compensation unless a superannuation allowance was due to the holder by ss. 10 and 46.[4]

In *Dunn* v. *Macdonald*[5] the plaintiff having been unsuccessful in a Petition of Right for dismissal by the Crown[6], brought his action against the defendant, who was H.M.'s Consul-General and Commissioner of the Oil Rivers Protectorate, for breach of warranty that he had authority to engage the plaintiff for the service and on behalf of Her Majesty for three years certain. In giving judgment against the plaintiff the Court affirmed the immunity of persons in a public character or employment for acts done in such character or employment. The doctrine, that an agent who makes a contract on behalf of a principal is liable to the other

1 *Dunn* v. *Reg.*, L. R. (1896) 1 Q. B. 116.
2 *Gould* v. *Stuart*, L. R. (1896) A. C. 575, 65 L. J. P. C. 82.
3 *Young* v. *Adams*, L. R. (1898) A. C. 469; 67 L. J. P. C. 75.
4 *Young* v. *Waller*, L. R. (1898) A. C. 661; 67 L. J. P. C. 80.
5 L. R. (1897) 1 Q. B. 555.
6 *Vid. Dunn* v. *Reg.* L. R. (1896) 1 Q. B. 116.

party for breach of an implied warranty of authority to enter into the contract, is not applicable to contracts made by public servants acting on behalf of the Crown. No action will lie against a public servant on any contract he may make in that capacity.

Where a public servant is entitled to quarters, rent may not be deducted from his salary.[1] The additional years of service entitling to a superannuation allowance under s. 48 of the Civil Service Act, 1884, of New South Wales need not be continuous.[2]

When a Colonial Government had entered into a contract for military services in South Africa at certain rates of pay, it was held that it did so on behalf of the Crown, and that payments by the Crown through the Imperial Government for services so rendered to the Crown were in part discharge of moneys due under the contract, which the Colonial Government was entitled to the benefit of. The Government in relation to the contract is the King himself, the soldier is his soldier, supplies granted to His Majesty to pay his soldiers, whether by the Imperial or the Colonial Legislature, are money granted to the King; and the Appropriation Act, whenever one is passed, simply operates to prevent its application to another purpose; therefore the money paid is money paid for service to the King, and no other payment can possibly be due under the contract.[3]

[1] *Rex* v. *Fisher*, *Rex* v. *Bull*, L. R. (1903) A. C. 158; 72 L. J. P. C. 45.
[2] *Walker* v. *Simpson*, L. R. (1903) A. C. 208, 72 L. J. P. C. 58.
[3] *Williams* v. *Howarth*, L. R. (1905) A. C. 551; 74 L. J. P. C. 115.

CHAPTER III.

LEGISLATIVE POWER.

CHAP. III. Legislative Power.

A COLONIAL Legislature is defined in 26 & 27 Vict. c. 84 [1] to mean the authority (other than His Majesty in Council) competent to make laws for any of His Majesty's possessions abroad, except India, the Channel Islands, and the Isle of Man. In the subsequent Act to remove doubts as to the validity of colonial laws [2] the above definition is repeated ; and a Representative Legislature is defined as any Colonial Legislature which should comprise a legislative body of which one-half are elected by inhabitants of the colony. By the same section the expression "colonial law" is to include laws made for any colony either by such Legislature as aforesaid or by His Majesty in Council. By the Interpretation Act, 1889,[3] the expression "Colonial Legislature" in that and subsequent Acts of Parliament, and the expression "Legislature," when used in that or subsequent Acts with reference to a British possession,[4] shall respectively mean the authority, other than the Imperial Parliament or His Majesty the King in Council, competent to make laws for a British possession.

Professor Dicey in his "Law of the Constitution" points out that Colonial Legislatures are non-sovereign legislative bodies, and bear decisive marks of legislative subordination. Their action is restricted by laws which they cannot change. Their Acts, even when assented to

1 S. 1 ; cp. 32 & 33 Vict. c. 11, s. 2.
2 28 & 29 Vict. c. 63, s. 1.
3 52 & 53 Vict. c. 63, s. 18 (7).
4 For definition of "British possession" *vide ante*, p. 2.

by the Crown, are liable to be treated by the courts in the colonies and elsewhere in the British dominions as void or unconstitutional on the ground that they are in conflict with the laws of the Imperial Parliament which the colonial legislatures have no authority to touch.[1] A great part of the Imperial legislation for the colonies arises out of the fact that an Act of a colonial legislature has, unless it is given extended operation by some Imperial statute, no effect beyond the limits of the colony.[2]

A Colonial Legislature is not a delegate of the Imperial Legislature. It is a Legislature restricted in the area of its powers, but within that area unrestricted and not acting as an agent or a delegate.[3]

In the case of *Reg.* v. *Burah*[4] a discussion took place upon the delegation of legislative powers by a law-making body, and the length to which such a body may go in conditional legislation, which is of some interest and importance in regard to legislative powers given to Colonial Legislatures by the Imperial Parliament. In the course of their judgment the Judicial Committee of the Privy Council said[5]: "Their Lordships are of opinion that the doctrine of the majority of the Court" (*i.e.*, of the Court below, that the Indian Legislature was in effect an agent or delegate, acting under a mandate from the Imperial Parliament, which must in all cases be executed directly by itself) "is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within those limits, it is not in any sense an agent or delegate of the

1 6th ed. p. 100 *et seqq.* Cp. *post*, pp. 76 *et seqq.* 2 Ibid. *note.*
3 *Powell* v. *Apollo Candle Co.*, L. R. 10 App. 282; *Hodge* v. *Reg.* L. R. 9 App. 117. 4 L. R. 3 App. 889. 5 Ibid. p. 904.

CHAP. III. Sect. 1. Classification of colonies.

Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large and of the same nature as those of Parliament itself." Subsequently[1] their Lordships added: "Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordships' judgment) be well exercised either absolutely or conditionally. Legislation conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and in many circumstances it may be highly convenient. The British Statute Book abounds with examples of it." This doctrine was subsequently approved and acted upon in *Powell* v. *Apollo Candle Co.*,[2] where a question arose as to the powers of the New South Wales Legislature; and was applied to the case of the Provincial Legislature of Canada in *Hodge* v. *Reg.*[3]

It has already been pointed out[4] that when a Representative Legislature has once been granted to a colony, the legislative power of the Crown by virtue of prerogative is no longer exercisable. The Crown then stands in the same relation to the colony as it does to the United Kingdom.[5]

Section 1.

The Colonies have been recently classified as regards the nature and distribution of their legislative powers as follows[6]:—

1. Those in which there is no Legislative Council. The legislative power is delegated to the officer administering the Government.

1 L. R. 3 App. p. 906. 2 L. R. 10 App. 282; *vide post*, sec. 2.
3 L. R. 9 App. 117; see *post*, p. 80. 4 *Ante*, p. 21.
5 *Ante*, p. 25. *Re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 148.
6 See Introduction, Colonial Office List.

In this class are found Gibraltar, Labuan,[1] S. Helena, Northern and Southern Nigeria, Basutoland.[2]

In all of these colonies except the last the Crown has retained the power of legislating by Order in Council.

2. Those in which there is a Legislative Council nominated by the Crown, viz., British New Guinea,[3] Ceylon, Falklands, Fiji, Gambia, Gold Coast, Grenada, Hong Kong, Lagos, Orange River Colony, S. Lucia, St. Vincent, Seychelles, Sierra Leone, The Straits Settlements, Transvaal, Trinidad and Tobago, Turks Islands, British Honduras.[4]

In all these colonies, except the last, the Crown has reserved power of legislating by Order in Council.

Legislative Councils nominated by the Crown consist usually in part of the principal officers of the colony, and in part of unofficial persons.

By Order in Council, Dec. 29, 1887, made under the Foreign Jurisdiction Acts, the Gold Coast Legislative Council may exercise and provide for giving effect to all powers and jurisdiction His Majesty has acquired in the territories adjacent to the colony. Similarly for Lagos by Order in Council of same date.

3. Those in which the Legislative Council is partly elected, viz., British Guiana, Malta, Mauritius, Cyprus; in these the Crown has reserved power of legislation by Order in Council: Bahamas, Barbados, Bermuda, Jamaica, Leeward Islands.

4. Lastly come the colonies possessing elected Assemblies and responsible Governments, in which the Crown only has a veto on legislation, and the

1 Governor is also Governor of the territory of the British North Borneo Co.

2 Governed by a Resident Commissioner under the direction of the High Commissioner for South Africa (who is also Governor of Cape Colony).

3 Government carried on by an Administrator. See Order in Council of February 8, 1896, defining boundaries between British and Dutch possessions.

4 As to the constitution of British Honduras *vide Hodge* v. *A.-G. for British Honduras*, 2 Moo. P. C. C., N. S., 325.

CHAP. III. Sect. 1. Classification of colonies.

Home Government has no control over any public officer except the Governor. Under responsible government the Executive Councillors are appointed by the Governor alone with reference to the exigencies of representative government, the other public officers by the Governor on the advice of the Executive Council. In no appointment is the concurrence of the Home Government requisite. The control of all public departments is thus practically placed in the hands of persons commanding the confidence of a representative legislature. To this class belong * Canada, the Dominion of, * Newfoundland, † Cape Colony, * Natal, † The Australian Commonwealth, * New South Wales, * Queensland, † S. Australia, † Tasmania, † Victoria, Western Australia, * New Zealand.

In the colonies marked * the Council or Upper Chamber is nominated by the Crown; in those marked † it is elective. In Western Australia it was nominated for six years from the date of first summoning a Legislative Council, or till the population amounted to sixty thousand, whichever first happened.[1]

The following are subject to the authority of the general legislature of the Dominion, Colony, or Group to which they belong, but possess provincial legislatures of their own.

Name.	Nature of Provincial Legislature.	Subject to.
Ontario	Single elected Assembly	Dominion of Canada.
Quebec	Nominated Council and elected Assembly	
New Brunswick	Single elected Assembly	
Prince Edward Island	Nominated Council and elected Assembly	
Nova Scotia	Nominated Council and elected Assembly	
Manitoba	Single elected Assembly	
British Columbia	Single elected Chamber	
N. W. Territory	" "	

1 Western Australia Constitution Act, 1890 (scheduled to 53 & 54 Vict. c. 26), s. 42.

Name.	Nature of Provincial Legislature.	Subject to.
Antigua . . .	Composite nominated Council	Leeward Islands.
Montserrat . . .	Nominated Council . .	
S. Kitts, Nevis, and Anguilla . . .	Composite nominated Council . . .	
Virgin Islands . .	None; laws ordained by Governor of Leeward Islands	
Dominica . . .	Composite nominated Council . . .	

In colonies without representative assemblies the initiation of all laws belongs in general to the Governor. In colonies having such assemblies it is in many cases provided by local or statute law that the initiation of all measures for the appropriation of public money shall belong to the Governor.

In every colony the Governor has authority to give or withhold assent to laws passed by the other branches or members of the legislature. Without his assent no law is binding.

Laws in some cases are passed with clauses suspending their operations until confirmed by His Majesty. In other cases Parliament has empowered the Governor to reserve laws for the Crown's assent.

Every law which has received the Governor's assent comes into operation immediately or at the time therein specified, unless it contains a suspending clause. But the Crown retains power to disallow any law; and whenever that power is exercised, the law ceases to operate from the time such disallowance is published in the colony. By the British North America Act, 1867, the disallowance should take place within two years of the law being received from the Governor by the Secretary of State for the Colonies.[1]

In colonies possessing representative assemblies laws purport to be made by the King or by the Governor on H.M.'s behalf, or by the Governor alone with the

[1] 30 & 31 Vict. c. 3, s. 56.

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advice and consent of the Council and Assembly. They are designated Acts almost invariably.

In colonies not having such assemblies laws purport to be made by the Governor with the advice and consent of the Legislative Council, and are designated Ordinances.

In West Indian Islands or African Settlements which form part of any general government every Bill or draft Ordinance must be submitted to the Governor-in-Chief before it receives the assent of the Lieutenant-Governor or Administrator. The Governor-in-Chief may require amendments to be made before the law is brought into operation, or may authorise assent to it on the legislature's engaging to give effect to any recommendation he may have to make by a supplementary enactment.[1]

It was decided in *Devine* v. *Holloway*[2] that the authority of the Governor and Legislative Council under 9 Geo. 4, c. 83, ss. 19 and 20, to make laws and ordinances for the government of New South Wales was not determined by the demise of the Crown. (Now by 1 Edw. 7, c. 5, the holding of any office, whether within or without H.M.'s dominions, is not affected by the demise of the Crown, nor is any fresh appointment necessary.)

The power of the Crown to negative or veto the Bills of colonial legislatures is virtually the right of the Imperial Parliament to limit colonial legislative independence, and is frequently exercised. This check on colonial legislatures is exerted in two forms: (1) the Governor may directly refuse his assent to a Bill; or he may reserve it for the consideration of the Crown, when the Bill does not come into force till it has either explicitly or constructively[3] received the Royal assent, that is, the assent of the English Ministry, that is, the indirect assent of the Imperial Parliament;

[1] See Rules and Regulations, Colonial Office List.
[2] 14 Moo. P. C. C. 290.
[3] *I.e.*, by lapse of time.

(2) the Governor may give his assent, and the Bill come into force; but it may be disallowed by the Crown afterwards within two years.[1]

Section 2.

Imperial Acts of Parliament have been passed from time to time for conferring constitutions or constituent powers upon various colonies. In one case the colony has passed a Constitution Act under the authority of Letters Patent from the Crown and confirmed by an Order in Council.

By 26 & 27 Vict. c. 84 all laws theretofore passed or purporting to have been passed by any Colonial Legislature to declare or alter the constitution of such legislature or any branch thereof, or the mode of appointing or electing the members of the same, shall have and be deemed to have had, from the date at which they shall have received the assent of His Majesty or of the Governor of the colony on his behalf, the same force and effect for all purposes whatever as if the legislature had possessed full powers of enacting laws for the said objects, and as if all formalities and conditions by Act of Parliament or otherwise prescribed in respect of the passing of such laws had been duly observed.[2]

Canada.

The British North America Act, 1867,[3] is the foundation of the present Canadian constitution. By it the Queen in Council was empowered to declare by proclamation within six months of the passing of the Act (March 29, 1867) the provinces of Canada, Nova Scotia and New Brunswick to form the Dominion of Canada,[4] consisting of the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick,[5]

1 Dicey's Law of the Constitution, 105 *seqq.*, *qu. vide* for instances.
2 S. 2. 3 30 Vict. c. 3. 4 S. 3. 5 S. 5.

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the two former constituted respectively of the two former provinces of Upper Canada and Lower Canada.[1] On addresses from the Parliament of Canada and the legislatures respectively of Newfoundland, Prince Edward Island and British Columbia, these latter colonies, or any of them, were to be admitted into the Union; and on address from the Parliament of Canada, Rupert's Land and the North-West Territory or either of them.[2] Newfoundland alone now remains outside the Union. The British North America Act, 1871,[3] empowered the Dominion Parliament to establish new provinces and provide for the constitution and administration thereof,[4] and to alter the limits of provinces with the consent of their legislatures,[5] and to legislate for territories not included in any province.[6] Accordingly, the North-West Territories were obtained from the Hudson's Bay Company by purchase in 1869, and out of them was carved the province of Manitoba in 1870. By the British North America Act of 1886[7] the Dominion Parliament was also empowered from time to time to make provision for the representation in itself of any territories forming part of the Dominion, but not included in any province.[8]

The Executive Power remains vested in the King,[9] with a Privy Council consisting of members from time to time chosen and summoned by the Governor-General, who may also from time to time remove members.[10] The Privy Council constitutes the Ministry. To the Governor-General in Council or individually are transferred all powers under Acts of the Parliament of Great Britain and Great Britain and Ireland, or of the Legislature of Upper or Lower Canada, Canada, Nova Scotia or New Brunswick, exer-

1 S. 6.
2 S. 146. *Vide A.-G. for Prince Edward Island* v. *A.-G. for Dominion of Canada*, L. R. (1905) A. C. 37; 74 L. J. P. C. 9.
3 34 Vict. c. 28. 4 S. 2. 5 S. 3.
6 S. 4. 7 49 & 50 Vict. c. 35. 8 S. 1; and see s. 2.
9 Act of 1867, s. 9. 10 S. 11.

cisable by the respective Governors or Lieutenant-Governors of those provinces in Council or individually.[1] The King may authorise the Governor-General to appoint deputies in any part of the Dominion.[2] The command of all armed forces remains vested in the King.[3]

The Legislative Power is vested in one Parliament for Canada, consisting of the King, a Senate, and a House of Commons,[4] holding a session at least once a year,[5] each House with privileges, immunities and powers, to be defined by Act of Parliament, but not to exceed those at the passing of the Act held, enjoyed, and exercised by the Commons House of the Parliament of the United Kingdom.[6]

The members of *the Senate* are summoned to sit for life by the Governor-General in the name of the King,[7] but they may resign.[8] They must be thirty years of age, natural born or naturalised subjects of the King, each possessed of property, real or personal, within the province they represent worth $4000, and resident therein.[9] They at present number eighty-one.[10] The Governor-General may summon three or six additional senators representing equally Ontario, Quebec and the Maritime Provinces (Nova Scotia and New Brunswick, and, if added, Prince Edward Island);[10] but in such case no other person is to be summoned until each of the three divisions is represented by no more than twenty-four senators.[11] The place of a senator becomes vacant

(1) if he fail to attend for two consecutive sessions;

(2) if he acknowledge allegiance to, or become a subject or citizen of, or entitled to the

1 30 Vict. c. 3, s. 12. 2 S. 14. 3 S. 15. 4 S. 17.
5 S. 20. 6 38 & 39 Vict. c. 38, s. 1.
7 Act of 1867, ss. 24, 29. 8 Ibid. s. 30. 9 S. 23.
10 Ss. 26, 22, 147. 11 S. 27.

rights or privileges of a subject or citizen of, a foreign power;
(3) if he become bankrupt or insolvent;
(4) if he be attainted of treason or convicted of felony or any infamous crime;
(5) if he cease to be qualified by property or residence.[1]

The House of Commons consists of a number of members elected for five years (unless the House is sooner dissolved)[2] in proportion to population, so that Quebec always has sixty-five members, and the other provinces each a number similarly proportional to its population; the members being readjusted according to decennial censuses[3]. At present the House consists of 214 members. All money bills must originate in the House of Commons,[4] and must be recommended to that House by the Governor-General.[5]

The Governor-General, when a Bill is presented to him for the King's assent, may either assent thereto, withhold assent, or reserve it for the signification of the King's pleasure.[6] Bills assented to may be disallowed by the King in Council within two years after receipt by the Secretary of State from the Governor-General of an authentic copy of the Act.[7] A Bill reserved for the signification of the King's pleasure has no force unless within two years from its presentation to the Governor-General he signifies by speech or message to each of the Houses of Parliament, or by proclamation, that it has received the assent of the King in Council.[8]

Each province has a Lieutenant-Governor appointed by the Governor-General[9] to hold office during his pleasure, but irremovable within five years of his appointment except for cause assigned, communicated

1 30 Vict c. 3, s. 31. 2 S. 50. 3 S. 51. 4 S. 53.
5 S. 54. 6 S. 56. 7 S. 55. 8 S. 57. 9 S. 58.

to himself in writing and to the Houses of Parliament by message[1]; with powers the same as or similar to those exercised before the Union by the Governors or Lieutenant-Governors of Upper Canada, Lower Canada, or Canada.[2] In Ontario and Quebec the Governor appoints his own Executive Council.[3] In Nova Scotia and New Brunswick the constitution of the Executive continues as it existed at the Union until altered.[4]

Each of the Provinces has its own Legislature, of which the Lieutenant-Governor always forms part. In Ontario there is an elective Legislative Assembly[5] composed of 82 members; in Quebec a Legislative Council of 24 nominated members, with the same qualifications as the senators for Quebec, and a Legislative Assembly of 65 elected members[6]; in Nova Scotia a Legislative Council of 21 members nominated for life, and a House of Assembly of 38 representatives elected every four years; in New Brunswick a Legislative Assembly of 41 elected members; in British Columbia a Legislative Assembly of 33 elected members; in Manitoba a Legislative Assembly of 38 members elected for four years; in Prince Edward Island a Legislative Council of 13 and a House of Assembly of 30 members, both elective; in the North-West territories a Legislative Assembly of 22 elected members.

The provisions in the Act of 1867 respecting the Parliament of Canada[7] as to money bills, assent to bills, disallowance of Acts, and signification of pleasure on bills reserved, extend and apply *mutatis mutandis* to the provincial legislatures, with the substitution of one year for two years.[8]

Careful provision is made for the distribution of the legislative powers between the Dominion Parliament and the Provincial Legislatures. The legislative

1 30 Vict. c. 3, s. 59. 2 S. 65. 3 S. 63. 4 S. 64. 5 Ss. 69, 70.
6 Ss. 71, 72, 73, 80. 7 See *ante*, p. 68. 8 S. 90.

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authority of the Dominion Parliament extends to all matters not coming within the classes of subjects by the Act of 1867 assigned exclusively to the Legislatures of the Provinces,[1] and particularly and exclusively to all matters coming within the following classes of subjects,[2] viz.,—

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any mode or system of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Services.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence,
8. The fixing of and providing for the Salaries and Allowances of Civil and other officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the establishment and maintenance of Marine Hospitals.
12. Sea coast and inland Fisheries.
13. Ferries between a Province and any British or foreign country or between two Provinces.
14. Currency and coinage.
15. Banking, incorporation of Banks, and the issue of Paper money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and Insolvency.

[1] See below, p. 71. [2] 30 Vict. c. 3, s. 91.

22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Land reserved for the Indians.
25. Naturalisation and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the constitution of Courts of criminal jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of Penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by the Act assigned exclusively to the Legislatures of the Provinces.

Any matter coming within the above classes of subjects is not to be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by the Act assigned exclusively to the Legislatures of the Provinces.

In each Province the Legislature may exclusively make laws relating to matters coming within the following classes of subjects,[1] viz.,—

1. The amendment from time to time, notwithstanding anything in the Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct Taxation within the Province to raise a revenue for provincial purposes.
3. The borrowing of Money on the sole credit of the Province.
4. The establishment and tenure of provincial Offices, and the appointment and payment of provincial Officers.

[1] 30 Vict. c. 3, s. 92.

5. The management and sale of the Public Lands belonging to the Province, and of the timber and wood thereon.
6. The establishment, maintenance, and management of Public and Reformatory Prisons in and for the Province.
7. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and eleemosynary institutions in and for the Province, other than Marine Hospitals.
8. Municipal institutions in the Province.
9. Shop, saloon, tavern, auctioneer, and other Licences for raising a revenue for provincial, joint, or municipal purposes.
10. Local works and undertakings other than such as are of the following classes:—
    (*a*) Lines of steam and other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;
    (*b*) Lines of steamships between the Province and any British or foreign country;
    (*c*) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces.
11. The incorporation of Companies with provincial objects.
12. The solemnisation of Marriage in the Province.

13. Property and civil rights in the Province.
14. The administration of Justice in the Province, including the constitution, maintenance, and organisation of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.
15. The imposition of Punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects above enumerated.
16. Generally, all matters of a merely local or private nature in the Province.

In each Province the Legislature may also exclusively make laws for education, subject to provisions protecting denominational schools, the dissentient schools of Protestant and Roman Catholics in Quebec, and the rights or privileges of Protestant or Roman Catholic minorities in relation to education.[1]

The Governor-General appoints the judges of the Superior, District, and County Courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick;[2] in Quebec they are selected from the Bar of that Province, and are to be selected in Ontario, Nova Scotia, and New Brunswick from their respective Bars until the laws relative to property and civil rights in those provinces are made uniform.[3] The judges of the Superior Courts hold office during good behaviour, but are removable by the Governor-General on address of the Senate and House of Commons.[4] The power to constitute a general Court of Appeal for Canada given to the Dominion Parliament[5] has been exercised by constituting a Supreme Court in Ottawa having appellate jurisdiction, civil

1 30 Vict. c. 3, s. 93. 2 S. 96.
3 S. 97; see s. 94. 4 S. 99. 5 S. 101.

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and criminal throughout the Dominion. There is an appeal from this court to H.M. in Council.[1]

Provision is also made for the creation of a Consolidated Revenue Fund,[2] expenses of collection, &c.,[3] interest of provincial public debts,[4] salary of Governor-General,[5] appropriation of revenue,[6] transfer of stocks, &c.,[7] and public works and property[8] from the Provinces to the Dominion, retention of property in lands, mines, minerals, and royalties by the several Provinces,[9] liability of the Dominion for provincial debts,[10] grants to Provinces by Dominion for support of government,[11] admission free into all the Provinces of articles grown, produced, or manufactured in any Province,[12] exportation and importation between two Provinces,[13] lumber dues in New Brunswick,[14] exemption from taxation of public lands and property,[15] and for a Provincial Consolidated Revenue Fund.[16]

Except as otherwise provided by the Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain, or of that of Great Britain and Ireland) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the authority of the Parliament or of that Legislature under the Act.[17]

The British North America Act, 1867, has been

1 See *post*, chap. v. 2 30 Vict. c. 3, s. 102. 3 S. 103.
4 S. 104. 5 S. 105. 6 S. 106. 7 S. 107. 8 Ss. 108, 117.
9 S. 109. 10 Ss. 110–116. 11 Ss. 118–120. 12 S. 121.
13 S 123. 14 S. 124. 15 S. 125. 16 S. 126.
17 S. 129.

frequently discussed before the Judicial Committee of the Privy Council in appeals to that tribunal from the Canadian courts, especially the provisions of ss. 91, 92. Many important decisions have been given by their Lordships; and the relations between the Dominion and Provincial governments and legislatures have ~~been~~ been elucidated with great care and acumen.

Until the passing of the Act there was precisely the same relation between the Crown and the provinces which now subsists between the Crown and the Dominion. That statute has not severed the connection between the Crown and the provinces; nor has it made the government of the Dominion the only government of Her Majesty in North America. The provisions of the Act nowhere profess to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the provinces. The object of the Act was neither to weld the provinces into one, nor to subordinate provincial government to a central authority; but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing between the Dominion and the provinces all powers executive and legislative, and all public property and revenues, which had previously belonged to the provinces; so that the Dominion Government should be vested with such of these powers, property, and revenues as were necessary for the due performance of its constitutional functions, and that the remainder should be retained by the provinces for the purposes of provincial government. But, in so far as regards those matters which by s. 92 are specially reserved for provincial legislation, the legislature of each province continues to be free from the control of

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the Dominion, and as supreme as it was before the passing of the Act.[1]

According to the scheme of the Act the enactments of the Parliament of Canada, in so far as these are within its competency, must override provincial legislation. But the Dominion Parliament has no authority conferred upon it by the Act to repeal directly a provincial statute, whether it comes or does not come within the limits of jurisdiction prescribed by s. 92. The repeal of a provincial Act by the Parliament of Canada can only be effected by repugnancy between its provisions and the enactments of the Dominion; and if the existence of such repugnancy should become matter of dispute, the controversy cannot be settled by the action either of the Dominion or the provincial legislature, but must be submitted to the judicial tribunals of the country.[2]

Sections 91 and 92 must, in regard to the classes of subjects generally described in s. 91, be read together, and the language of one interpreted and, where necessary, modified by that of the other, so as to reconcile the respective powers they contain and give effect to all of them. Each question should be decided as best it can, without entering more largely than is necessary upon an interpretation of the statute.[3]

The legislation of the Dominion Parliament, so long as it strictly relates to the subjects enumerated in s. 91, is of paramount authority, even though it trenches on the matters assigned to the provincial legislatures by s. 92.[4]

After pointing out that there may be matters, not

1 *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. pp. 441 *et seqq.*

2 *A.-G. for Ontario* v. *A.-G. for the Dominion and the Distillers and Brewers' Association of Ontario*, L. R. (1896) A. C. p. 366.

3 *Citizens Insurance Co.* v. *Parsons*; *Queen Insurance Co.* v. *Same*; L. R. 7 App. 96; 51 L. J. P. C. 11.

4 *Tennant* v. *Union Bank of Canada*, L. R. (1894) A. C. 31; 63 L. J. P. C. 25.

included in the enumeration in s. 91 of matters within the exclusive authority of the Canadian Parliament, on which that Parliament has power to legislate because they concern the peace, order, and good government of the Dominion, the Judicial Committee of the Privy Council expressed the opinion that the exercise of legislative power by the Parliament of Canada in regard to all such matters ought to be strictly confined to such matters as are unquestionably of national interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92 unless in the case of some matters in their origin local and provincial, but which have obtained such dimensions as to affect the body politic of the Dominion.[1]

Subjects, which in one aspect and for one purpose fall within s. 92, may in another aspect and for another purpose fall within s. 91.[2]

Thus the "drink question" is not specifically mentioned in either s. 91 or s. 92, with the remarkable result that in *Russell* v. *Reg.*[3] legislation for it by a Dominion Act was sustained as relating to the peace, order and good government of Canada; while in *A.-G. for Manitoba* v. *Manitoba Licence Holders' Association*[4] provincial legislation with regard to it was upheld as concerning a matter of a merely local nature.

The subject of Naturalisation, that is, the right to determine how it is to be constituted, is reserved to the exclusive jurisdiction of the Dominion Parliament by s. 91, sub-s. 25; but the right to determine what privileges, as distinguished from necessary consequences, are to be attached to it belongs to the provincial legislature under s. 92, sub-s. 1. Hence s. 8 of the British Columbia Provincial Elections Act, disqualifying Japanese from voting, is not *ultra vires* of the

1 *A.-G. for Ontario* v. *A.-G. for Dominion and the Distillers' and Brewers' Association of Ontario*, L. R. (1896) A. C. p. 360.
2 *Hodge* v. *Reg.*, L. R. 9 App. 117; 53 L. J. P. C. 1.
3 L. R. 7 App. 829. 4 L. R. (1902) A. C. 73; 71 L. J. P. C. 28.

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provincial legislature.[1] But the British Columbia Coal Mines Regulation Act, prohibiting Chinamen of full age from employment underground, was held to be *ultra vires* of the provincial legislature.[2] The Judicial Committee, in dealing with the particular facts of this latter case, came to the conclusion that the regulations there impeached were not really aimed at the regulation of coal mines at all, but in truth were devised to deprive the Chinese, naturalised or not, of the ordinary rights of inhabitants of British Columbia, and in effect to prohibit their continued residence in that province, since it prohibited their earning their living in the province. Such a decision, the Judicial Committee explained in the Japanese case, can have no relation to the question whether a naturalised person has an inherent right to the suffrage within the province he resides in.[3]

A Telephone Company's business, involving extension beyond the limits of any one province, is within the exception of sub-s. 10 (*a*) of s. 92 from the class of local works and undertakings assigned to the provincial legislatures; and therefore the Canadian Act, 43 Vict. c. 67, incorporating the company, is within the exclusive competence of the Dominion Parliament under s. 91.[4]

The Criminal law in its widest sense is reserved by s. 91, sub-s. 27, for the exclusive authority of the Dominion Parliament. Therefore an Ontario Act to prevent the profanation of the Lord's Day was held *ultra vires* of the provisional legislature.[5]

The words "property and civil rights in the province" in s. 92, sub-s. 13, include rights arising from

1 *Cunningham* v. *Tomey Homma*, L. R. (1903) A. C. 151; 72 L. J. P. C. 23, *nom. Vancouver City (Collector of Voters)* v. *Tomey Homma*.

2 *Union Colliery Co. of British Columbia* v. *Bryden*, L. R. (1899) A. C. 580.

3 L. R. (1903) A. C. p. 157.

4 *Toronto Corporation* v. *Bell Telephone Co.*, L. R. (1905) A. C. 52; 74 L. J. P. C. 22.

5 *A.-G. for Ontario* v. *Hamilton Street Railway*, L. R. (1903) A.C. 524.

contract (which are not in express terms included under s. 91), and are not limited to such rights only as flow from the law—*e.g.*, the *status* of persons. And the words "regulation of trade and commerce" in s. 91, sub-s. 2, include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and, it may be, general regulation of trade affecting the whole Dominion; but do not include the regulation of the contracts of a particular business or trade, such as the business of fire insurance, in a single province; and therefore do not conflict with the power over property and civil rights conferred by s. 92. Consequently the Ontario Act, 39 Vict. c. 24, as to fire insurance policies entered into or in force in Ontario on property therein situate were held valid.[1]

The Dominion Controverted Elections Act, Canadian Statute, 37 Vict. c. 10, does not contravene s. 92, sub-s. 14, of the British North America Act, 1867, that sub-s. not relating to election petitions, while s. 41 reserved to the Canadian Parliament the power of creating a jurisdiction to determine them. The Canadian Parliament has power to commit such jurisdiction to the existing provincial courts.[2]

The provision in the Dominion Act, 40 Vict. c. 41, s. 28, that the judgment of the Court of Appeal in matters of insolvency shall be final, was held to be within the competency of the Canadian Parliament under s. 91 of the British North America Act, 1867, and not to infringe the exclusive power given to the provincial legislatures by s. 92; nor to interfere with the Queen's prerogative to allow such appeals as an act of grace.[3]

The Canada Temperance Act, 1878, which in effect, whenever throughout the Dominion put in force,

1 *Citizens Insurance Co.* v. *Parsons; Queen Insurance Co.* v. *Same;* L. R. 7 App. 96.
2 *Valin* v. *Langlois*, L. R. 5 App. 115; 49 L. J. P. C. 37.
3 *Cushing* v. *Dupuy*, L. R. 5 App. 409; 49 L. J. P. C. 63.

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uniformly prohibits the sale of intoxicating liquors except in wholesale quantities or for certain specified purposes, regulates the traffic in the excepted cases, makes sales of liquor in violation of the prohibitions and regulations contained in the Act criminal offences punishable by fine, and for the third or subsequent offence by imprisonment, was held to be within the legislative competence of the Dominion Parliament under ss. 91, 92 (sub-ss. 9, 13, 16) of the British North America Act, 1867; the objects and scope of the Act being general, viz., to promote temperance by means of a uniform law throughout the Dominion; and relating to the peace, order, and good government of Canada, and not to the class of subjects "property and civil rights"; nor does provision for the special application of the Act to particular places alter its character as general legislation.[1]

This case was explained in *Hodge* v. *Reg.*,[2] in which it was decided that the Liquor Licence Act of 1877, Revised Statutes of Ontario, c. 181, making regulations in ss. 4 and 5 in the nature of police or municipal regulations of a merely local character for the good government of taverns, &c., does not in respect of those sections interfere with the "general regulation of trade or commerce," but comes within s. 92, sub-ss. 8, 15, 16, of the British North America Act, 1867, and is within the power of the Provincial Legislature; which has power, further, to entrust to a Board of Commissioners authority to enact regulations of the above character, and thereby to create offences and annex penalties thereto. Their Lordships in giving judgment stated[3] that the provincial legislatures are in no sense delegates of, or acting under any mandate from, the Imperial Parliament. When the British North America Act enacted that there

[1] *Russell* v. *Reg.*, L. R. 7 App. 829. Followed in *A.-G. for Ontario* v. *A.-G. for the Dominion and the Distillers and Brewers Association of Ontario*, L. R. (1896) A. C. 348; 65 L. J. P. C. 26.

[2] L. R. 9. App. 117.

[3] L. R. 9 App. p. 132.

should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in s. 92, it conferred powers not in any sense to be exercised by delegation from, or as agents of, the Imperial Parliament, but authority as plenary and ample within the limits prescribed by s. 92 as the Imperial Parliament in the plentitude of its power possessed or could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make bye-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.

In *A.-G. for Manitoba* v. *Manitoba Licence Holders Association*[1] it was held that local legislation in regard to the liquor traffic was *intra vires*, although interfering with the revenue of the Dominion, and indirectly with business relations outside the province, as concerning a matter of merely local nature.

The Canadian Act, 37 Vict. c. 103, creating a corporation with power to carry on certain definite kinds of business within the Dominion, is within the legislative competence of the Dominion Parliament; the fact that the corporation confines the exercise of its powers to one province and to local and provincial objects does not affect its *status* as a corporation, nor render its original incorporation illegal as *ultra vires* of the Dominion Parliament. Nor could the corporation be prohibited generally from acting as such within the province, or restrained from doing specified acts in violation of the provincial law, on a petition not directed and adapted to that purpose.[2]

1 L. R. (1902) A. C. 73; 71 L. J. P. C. 28.

2 *Colonial Building and Investment Association* v. *A.-G. of Quebec*, L. R. 9 App. 157; 53 L. J. P. C. 27.

The Quebec Act, 33 Vict. c. 58, purporting to relieve by legislation the society called L'Union S. Jacques de Montréal, appearing on the face of the Act to have been in a state of extreme financial embarrassment, was held to be within the legislative capacity of that legislature, as relating to a matter merely of local or private nature in the province, assigned by s. 92 of the British North America Act, 1867, to the exclusive competency of the provincial legislature, and as not falling within the category of bankruptcy, insolvency, or any other class of subjects reserved by s. 91 for the exclusive authority of the Dominion Parliament.[1]

Enactments ancillary to the bankruptcy law are within the competence of a provincial legislature so long as they are not in conflict with the existing bankruptcy law of the Dominion Parliament.[2]

The Act of New Brunswick, 33 Vict. c. 47, "to authorise the issuing of debentures on the credit of the lower district of the parish of St. Stephen in the county of Charlotte," empowering the majority of the inhabitants of that parish to raise by local taxation a subsidy designed to promote the construction of a railway extending beyond the limits of the province, but already authorised by statute, is within the legislative capacity of the provincial legislature under s. 92, sub-s. 2, of the British North America Act, 1867; the Act relating to "a matter of a merely local or private nature in the province," assigned by that section to the exclusive competency of the provincial legislature, and not relating to the railway or any local work or undertaking within the subjects excepted in sub-s. 10 (*a*) of the above section.[3]

The Quebec Act, 45 Vict. c. 22, imposing certain direct taxes on certain commercial corporations carry-

1 *L'Union S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31.
2 *A.-G. of Ontario* v. *A.-G. of Dominion of Canada*, L. R. (1894) A. C. 189; 63 L. J. P. C. 59.
3 *Dow* v. *Black*, L. R. 6 P. C. 272; 44 L. S. P. C. 52.

ing on business in the province, is *intra vires* of the provincial legislature. A tax imposed on banks carrying on business within the province, varying in amount with the paid-up capital and the number of its officers, whether or not their principal place of business is in the province, is direct taxation within s. 92, sub-s. 2, of the British North America Act, 1867, the meaning of which is not restricted in this respect by either sub-s. 2, 3, or 15 of s. 91. Similarly as to insurance companies taxed in a sum specified by the Act.[1] For the same reason sub-s. 2 of the Liquor Licence Act, Revised Statutes of Ontario, c. 194, s. 51, is *intra vires* of the Ontario Legislature.[2]

The clauses of the Quebec Act, 39 Vict. c. 7, imposing a tax on certain policies of assurance and certain receipts or renewals are not authorised under s. 92, sub-ss. 2 and 9, of the British North America Act of 1867. A Licence Act, providing that the price of a licence shall consist of an adhesive stamp payable in respect of each transaction, not by the licensee, but by the person who deals with him, is virtually a Stamp Act. The imposition of a stamp duty on policies, renewals, and receipts, with provision for avoiding the policy, renewal, or receipt in a court of law if the stamp is not affixed, is not within the terms of an Act authorising the imposition of direct taxation.[3]

The Quebec Act, 58 Vict. c. 69, granting the exclusive right to establish a system of electric lighting for a term of years, is within the exclusive competence of the provincial legislature.[4]

The Quebec Act, 43 & 44 Vict. c. 9, imposing a duty of ten cents on every exhibit filed in court in any action depending therein, was held to be *ultra*

[1] *Bank of Toronto* v. *Lambe*, L. R. 12 App. 575 ; 56 L. J. P. C. 87.
[2] *Brewers' and Maltsters' Association of Ontario* v. *A.-G. for Ontario*, L. R. (1897) A. C. 231 ; 66 L. J. P. C. 34.
[3] *A.-G. for Quebec* v. *Queen Insurance Co.*, L. R. 3 App. 1090.
[4] *Hull Electric Co.* v. *Ottawa Electric Co.* L. R. (1902) A. C. 237 ; 71 L. J. P. C. 58.

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vires of the provincial legislature as not direct taxation within s. 92, sub-s. 2, of the British North America Act, 1867, in order to the raising of revenue for provincial purposes; nor within s. 92, sub-s. 14, of the same Act, as relating to the administration of justice within the province; nor within s. 65, not having been done by the authority of the Lieutenant-Governor in Council, nor in aid of the Building and Jury Fund.[1]

In *A.-G. for Dominion of Canada* v. *A.-G. for the Province of Ontario*[2] the question was raised whether a statute of the Ontario Legislature, empowering the Lieutenant-Governor to appoint Queen's Counsel and to issue patents of precedence to members of the provincial Bar, was *intra vires*. In answering that question in the affirmative the Judicial Committee said that by the combined effect of sub-ss. 1, 4, 14 of s. 92 of the British North America Act, 1867, it was entirely within the discretion of a provincial legislature to determine by what officers the Crown—or, in other words, the executive government of the province—should be represented in its courts of law or elsewhere, and to define by Act of Parliament the duties, whether substantial or honorary, which were to be incumbent on those officers, and the rights and privileges they were to enjoy. C. 139 of the Revised Statutes of Ontario, 1877, was within the limits of that legislative authority; therefore there was no ground for the suggestion that its provisions, when given effect to by the Lieutenant-Governor, would constitute an encroachment on the prerogative of the Crown, or upon the rights of any representative of the Crown to whom, by the terms of his commission, the right of appointing counsel to represent the Sovereign may have been delegated.

The Dominion Act, 44 Vict. c. 1, s. 18 (*a*), incor-

[1] *A.-G. for Quebec* v. *Reed*, L. R. 10 App. 141; 54 L. J. P. C. 12.
[2] L. R. (1898) A. C. 247; 67 L. J. P. C. 17.

porating a transcontinental railway and granting it the right to deal with the provincial foreshore, as provincial Crown property, including the obstruction of previously existing rights of passage across the foreshore, was held to be within the legislative powers of the Dominion Parliament under ss. 91, 92 and 108 of the British North America Act, 1867.[1]

By s. 108 of the British North America Act, 1867, read in connection with the third schedule, the railway belonging to Nova Scotia, called the Windsor Branch, passed to and became vested in the Dominion; the Parliament of which by 37 Vict. c. 16, authorising a transfer of the railway to the appellant, did not, on its true construction, enact such transfer in derogation of the respondents' rights under an agreement of September 22, 1871, entered into with the respondents by the Provincial Government in pursuance of an obligation existing at the date of the statutory transfer. And *quære* whether it could.[2]

Section 109 of the British North America Act, 1867, gives to each province the entire beneficial interest of the Crown in all lands within its boundaries which at the time of the Union were vested in the Crown, subject to such rights as the Dominion can maintain under ss. 108 and 117. Lands situate in Ontario reserved "for the present" to Indian tribes by proclamation in 1763 as hunting-grounds, and surrendered in 1873 to the Government of the Dominion for the Crown subject to a qualified privilege of hunting and fishing, were held to be vested in the Crown subject to the Indian title, which was "an interest other than that of the Province in the same" within the meaning of s. 109; but by the surrender the entire beneficial interest in them was held to have been

[1] *A.-G. for British Columbia* v. *Canadian Pacific Railway*, L. R. (1906) A. C. 204; 75 L. J. P. C. 38. Cp. *Central Ontario Railway* v. *Trusts and Guarantee Co.*, L. R. (1905) A. C. 576; 74 L. J. P. C. 116.

[2] *Western Counties Railway Co.* v. *Windsor and Annapolis Railway Co.*, L. R. 7 App. 178; 51 L. J. P. C. 43.

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transmitted, subject to the privilege, to the Crown as representing the Province in terms of s. 109. The Dominion power of legislation over lands reserved for the Indians is not inconsistent with the beneficial interest of the Province therein.[1]

By treaties made in 1850 the Governor of Canada, as representing the Crown and the provincial government, obtained the cession of certain lands occupied as Indian reserves, the beneficial interest passing to the provincial government together with the liability to pay the Indians certain perpetual annuities. These lands, being within the limits of the province of Ontario, created by the British North America Act, 1867, the beneficial interest therein vested in the province under s. 109. The liability for the perpetual annuities was assumed by the Dominion under s. 111. The amounts were subsequently increased according to the treaties. The liability for the increase is not a charge on the lands in the hands of the province under s. 109. It must be paid by the Dominion with recourse to the provinces of Ontario and Quebec conjointly under ss. 111 and 112, in the same way as the original annuities.[2]

There is a broad distinction between property rights and legislative jurisdiction. The fact that such jurisdiction in respect of any particular subject-matter is conferred on the Dominion Legislature affords no evidence that any property rights with respect to it were transferred to the Dominion. . . . Whatever property rights were at the time of passing the British North America Act possessed by the provinces remain vested in them, except such as are by any of its express enactments transferred to the Dominion of Canada.[3]

[1] *St. Catherine's Milling and Lumber Co.* v. *Reg.*, L. R. 14 App. 46; 58 L. J. P. C. 54; followed in *Ontario Mining Co.* v. *Seybold*, L. R. (1903) A. C. 73; 72 L. J. P. C. 5.

[2] *A.-G. for Dominion of Canada* v. *A.-G. for Ontario*; *A.-G. for Quebec* v. *A.-G. for Ontario*, L. R. (1897) A. C. 199; 66 L. J. P. C. 11.

[3] *A.-G. for Dominion of Canada* v. *A.-G. for Ontario, Quebec and Nova Scotia*, L. R. (1898) A. C. 700; 67 L. J. P. C. 90.

Lands in Canada escheating to Crown for defect of heirs belong to the province in which they are situated, and not to the Dominion; the casual revenue arising from lands escheated to the Crown after the Union being reserved by s. 109 of the British North America Act, 1867, to the provinces—the words "lands, mines, minerals, and royalties" therein including royalties in respect of lands, such as escheats.[1]

A conveyance by the province of British Columbia to the Dominion of public lands, being in substance an assignment of its right to appropriate the territorial revenues arising therefrom, does not imply any transfer of its interest in revenue arising from the prerogative rights of the Crown. The precious metals in, upon, and under such lands are not incidents of the land, but belong to the Crown, and under s. 109 beneficially to the province; and an intention to transfer them must be expressed or necessarily implied.[2]

All property and revenues reserved to the provinces by ss. 109 and 126 of the British North America Act, 1867, are vested in Her Majesty as sovereign head of each province. Consequently the provincial Government of New Brunswick, being a simple contract creditor of the Maritime Bank of the Dominion of Canada in respect of public moneys of the province deposited in the name of the Receiver-General of the province, was held entitled to payment in full over the other depositors and simple contract creditors of the bank, its claim being for a Crown debt to which the prerogative attaches.[3]

The Act 34 & 35 Vict. c. 28, authorising the Parliament of Canada to provide for the administration, peace, order, and good government of any territory not for the time being included in any province, vests in that Parliament the utmost discretion of enactment

[1] *A.-G. of Ontario* v. *Mercer*, L. R. 8. App. 767; 52 L. J. P. C. 84.
[2] *A.-G. of British Columbia* v. *A.-G. of Canada*, L. R. 14 App. 295.
[3] *Liquidators of the Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. 437.

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for the attainment of those objects. Accordingly the Canadian Act, 43 Vict. c. 25, is *intra vires* of the legislature; and s. 76, sub-s. 7, prescribing that full notes of evidence be taken, is literally complied with when those notes are taken in shorthand.[1]

If a Court of law in Canada should come to the conclusion that a particular enactment was not calculated as a matter of fact and policy to secure peace, order, and good government, they would not be entitled to regard it, being directed towards those objects, as *ultra vires* of the Dominion Parliament's power to enact under the above first-mentioned Act.[2]

The powers conferred by s. 129 of the British North America Act of 1867 on the provincial legislatures of Ontario and Quebec, to repeal and alter the statutes of the old Parliament of Canada, are precisely co-extensive with the power of direct legislation with which those bodies are invested by the other sections of the Act. Thus 22 Vict. c. 66 of the Parliament of Canada, creating a corporation with corporate existence and rights in Ontario and Quebec, could not be repealed or modified by the legislature of either province or by both legislatures conjointly, but only by the Parliament of the Dominion. Hence the Quebec Act, 38 Vict. c. 64, assuming to repeal and amend the said 22 Vict. c. 66, and (1) to destroy a corporation created by the Canadian Parliament and substitute a new one, (2) to alter materially the class of persons interested in the corporate funds, and not merely to impose conditions on the transaction of business by the corporation within the province, was invalid.[3]

The British Columbia Provincial Elections Act, s. 8, disqualifying Japanese from voting, is *intra vires* of the

[1] *Riel* v. *Reg.*, L. R. 10 App. 675; 55 L. J. P. C. 28. [2] Ibid.
[3] *Doble* v. *Temporalities Board of Presbyterian Church of Canada*, L. R. 7 App. 136; 51 L. J. P. C. 26. And cp. *A.-G. for Ontario* v. *A.-G. for Dominion and the Distillers' and Brewers' Association of Ontario*, L. R. (1896) A. C. p. 366.

provincial legislature [1]; but the British Columbia Coal Mines Regulation Act prohibiting Chinamen of full age from employment underground was not.[2]

The phrase "aggregate population of Canada" in sub-s. 4 of s. 51 of the British North America Act, 1867, includes all the provinces subsequently incorporated and admitted into the Union, under s. 146, as well as the four originally constituting the Union.[3] The representation of Prince Edward Island at the admission of that province into the Union was held to be subsequently reducible under the provision of sub-s. 4 of s. 51, although it had not previously been increased.[4]

British Columbia.

The British Columbia Government Act, 1870,[5] empowered Her Majesty to make, revoke, or alter Orders in Council for constituting a Legislature consisting of *the Governor and a Legislative Council* for the colony and for making provisions and regulations respecting the constitution, power, and proceedings of the Legislature in either branch thereof, the number, appointment, and election of the members of the Legislative Council, and their tenure of office, and generally;[6] also for empowering the Governor by proclamation to determine the qualification of electors and elective members of the Legislative Council, and to make provision for dividing the colony into convenient electoral districts, registering voters, completing and revising lists of voters, appointing returning officers, issuing, executing, and returning election writs, taking the poll, deciding on disputed returns, &c.[7]

1 *Cunningham* v. *Tomey Homma*, L. R. (1903) A. C. 151; 72 L. J. P. C. 23, *nom. Vancouver City* v. *Tomey Homma*.

2 *Union Colliery Co. of British Columbia* v. *Bryden*, L. R. (1899) A. C. 580. See *ante*, p. 78, for the distinction between these two cases.

3 *A.-G. for Prince Edward Island* v. *A.-G. for Dominion of Canada*, *A.-G. for New Brunswick* v. *Same*, L. R. (1905) A. C. 37; 74 L. J. P. C. 9.

4 S. 4. See *ante*, p. 69.

5 33 & 34 Vict. c. 66.

6 S. 3.

7 Ibid.

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Newfoundland.

Newfoundland.

At present the Legislature consists of a Legislative Council not exceeding 15 in number, and a House of Assembly of 36 members, elected under manhood suffrage. By the Act for amending the constitution [1] Her Majesty was empowered, by commissions and instructions to the Government of Newfoundland under the Great Seal of the United Kingdom, to establish a property qualification for members of the Assembly of not more than £100 net annual income, or property clear of incumbrances not exceeding £500 in value; [2] to fix the length of residence entitling to vote at elections, and to be elected as members of the Assembly, but at not more than two years next preceding any election; [3] to restrain the Assembly from appropriating to the public service in the island any part of the public revenue unless previously recommended or asked by or on behalf of Her Majesty; [4] and to require all elections to the Assembly to be simultaneous and completed within a limited time.[5] (The rest of the Act is repealed.)

Australasia.

The Act to constitute the Commonwealth of Australia [6] empowered the Queen in Council to declare by proclamation the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia to be united in a Federal Commonwealth under the name of the Commonwealth of Australia, and to appoint a Governor-General for the Commonwealth.[7]

The Act and all laws made by the Parliament of the Commonwealth under the Constitution are binding on the courts, judges, and people of every State and

1 5 & 6 Vict. c. 120. 2 S. 1. 3 S. 2. 4 S. 3.
5 S. 4. 6 63 & 64 Vict. c. 12. 7 S. 3.

of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth are in force on all British ships, the King's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.[1]

"The Commonwealth" means the Commonwealth of Australia as established under the Act. "The States" mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called "a State." "Original States" mean such States as are parts of the Commonwealth at its establishment.[2]

Since the passing of the Act the Colonial Boundaries Act, 1895, does not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth is to be taken to be a self-governing colony for the purposes of the Act.[3]

The Constitution of the Commonwealth is incorporated in the Act as s. 9, and is divided into eight chapters, as follows:—

Chapter I.—The Parliament.
Part I.—General.
Part II.—The Senate.
Part III.—The House of Representatives.
Part IV.—Both Houses of the Parliament.
Part V.—Powers of the Parliament.
Chapter II.—The Executive Government.
Chapter III.—The Judicature.
Chapter IV.—Finance and Trade.
Chapter V.—The States.
Chapter VI.—New States.
Chapter VII.—Miscellaneous.
Chapter VIII.—Alteration of the Constitution.
The Schedule.

The Legislative Power of the Commonwealth is vested in a Federal Parliament, consisting of the King,

[1] S. 5. *Peninsular and Oriental Steam Navigation Co.* v. *Kingston*, L. R. (1903) A. C. 471. [2] S. 6. [3] S. 8.

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a Senate, and a House of Representatives.[1] The King is represented by a Governor-General appointed by him,[2] who appoints the times for holding the sessions of the Parliament, and may from time to time, by Proclamation or otherwise, prorogue the Parliament, and dissolve the House of Representatives. After any general election the Parliament is to be summoned to meet not later than thirty days after the day appointed for the return of the writs.[3] There is to be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.[4]

The Senate is composed of senators for each State, directly chosen by the people of the State, voting as one electorate. There are six senators chosen for six years for each Original State, their qualifications being the same as those of a member of the House of Representatives. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.[5] A senator may resign his place; and his place becomes vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend. One third of the whole number of Senators constitutes a quorum.[6]

The House of Representatives is composed of members directly chosen by the people of the Commonwealth for three years (unless the House is sooner dissolved), their number being, as nearly as practicable, twice the number of the senators. The number of members chosen in the several States is in proportion to the respective numbers of their people, determined in the following manner:—

1 Art. 1. 2 Art. 2. 3 Art. 5.
4 Art. 6. 5 Art. 7. 6 Arts. 19, 20.

(i) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:

(ii) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.[1]

Five members at least are to be chosen in each Original State. If by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.[2] The Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.[3] The Parliament of any State may determine the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States. In the absence of other provision, each State shall be one electorate.[4]

The qualifications of a member of the House of Representatives, as also of a senator, are as follows:—

(i) He must be of the full age of twenty-one years, and an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the

[1] Art. 24. [2] Art. 25. [3] Art. 27. [4] Art. 29.

Commonwealth as existing at the time when he is chosen:

(ii) He must be a subject of the King, either natural-born or for at least five years naturalised under a law of the United Kingdom, or of a colony which has become or becomes a State, or of the Commonwealth, or of a State.[1]

A member may resign his place; and his place becomes vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend.[2] One-third of the whole number of the members constitutes a quorum.[3]

A member of either House of the Parliament is incapable of being chosen or of sitting as a member of the other House.[4] And any person who

(i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

(ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or

(iii) is an undischarged bankrupt or insolvent: or

(iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

(v) has any direct or indirect pecuniary interest in any agreement with the public service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

[1] Arts. 15, 34. [2] Arts. 37, 38. [3] Art. 39. [4] Art. 43.

is incapable of being chosen or of sitting as a senator or a member of the House of Representatives. Subsect. iv. does not apply to the office of any of the King's Ministers of State for the Commonwealth, or of any of the King's Ministers for a State, or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the King's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.[1]

If a senator or member of the House of Representatives

(i) becomes subject to any of the disabilities mentioned in the last preceding paragraph: or
(ii) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or
(iii) directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place becomes vacant.[2] Each senator and each member of the House of Representatives receives an allowance of £400 a year, to be reckoned from the day on which he takes his seat.[3] The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, are those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.[4]

The Parliament has power to make laws for the peace, order, and good government of the Commonwealth with respect to

(i) Trade and commerce with other countries,

[1] Art. 44. [2] Art. 45. [3] Art. 47. [4] Art. 49.

and among the States, including navigation and shipping and state railways:[1]

(ii) Taxation; but so as not to discriminate between States or parts of States:

(iii) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:

(iv) Borrowing money on the public credit of the Commonwealth:

(v) Postal, telegraphic, telephonic, and other like services:

(vi) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:

(vii) Lighthouses, lightships, beacons and buoys:

(viii) Astronomical and meteorological observations:

(ix) Quarantine:

(x) Fisheries in Australian waters beyond territorial limits:

(xi) Census and statistics:

(xii) Currency, coinage, and legal tender:

(xiii) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:

(xiv) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:

(xv) Weights and measures:

(xvi) Bills of exchange and promissory notes:

(xvii) Bankruptcy and insolvency:

(xviii) Copyrights, patents of inventions and designs, and trade marks:

(xix) Naturalisation and aliens:

[1] *Peninsular and Oriental Steam Navigation Co.* v. *Kingston*, L.R. (1903) A. C. 471.

(xx) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:

(xxi) Marriage:

(xxii) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:

(xxiii) Invalid and old-age pensions:

(xxiv) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:

(xxv) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States:

(xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:

(xxvii) Immigration and emigration:

(xxviii) The influx of criminals:

(xxix) External affairs:

(xxx) The relations of the Commonwealth with the islands of the Pacific:

(xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:

(xxxii) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:

(xxxiii) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:

(xxxiv) Railway construction and extension in any State with the consent of that State:

(xxxv) Conciliation and arbitration for the prevention and settlement of industrial disputes

extending beyond the limits of any one State:

(xxxvi) Matters in respect of which the Constitution makes provision until the Parliament otherwise provides:

(xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

(xxxviii) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of the Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:

(xxxix) Matters incidental to the execution of any power vested by the Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.[1]

The Parliament has exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

(i) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:

(ii) Matters relating to any department of the public service the control of which is by the Constitution transferred to the Executive Government of the Commonwealth:

(iii) Other matters declared by the Constitution to be within the exclusive power of the Parliament.[2]

[1] Arts. 51, 98. [2] Art. 52.

Laws appropriating revenue or moneys, or imposing taxation, may not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law. The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government. The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people. The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may make any of such omissions or amendments with or without modifications. Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.[1]

The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government may deal only with such appropriation. Laws imposing taxation may deal only with the imposition of taxation, and, except laws imposing duties of customs or of excise, may deal with one subject of taxation only; but laws imposing duties of customs may deal with duties of customs only, and laws imposing duties of excise may deal with duties of excise only. A vote, resolution, or proposed law for the appropriation of revenue or moneys may not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.[2]

[1] Art. 53. [2] Arts. 54, 55, 56.

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If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time. If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives. The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried; and if the proposed law, with the amendments, if any, so carried, is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall

be presented to the Governor-General for the King's assent.[1]

When a proposed law is presented to the Governor-General for the King's assent, he may either assent, or withhold assent, or reserve the law for the King's pleasure.[2] The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.[3] The King may disallow any law within one year from the Governor-General's assent.[4] A proposed law reserved for the King's pleasure has no force unless within two years from its presentation to the Governor-General for the King's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the King's assent.[5]

The executive power of the Commonwealth is vested in the King, and is exerciseable by the Governor-General as the King's representative, and extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. The Governor-General is advised by a Federal Executive Council in the government of the Commonwealth, the members of which are chosen and summoned by him and sworn as Executive Councillors, and hold office during his pleasure.[6]

The provisions of the Constitution referring to the Governor-General in Council are to be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.[7]

The Governor-General appoints officers to administer the departments of State of the Commonwealth. They hold office during his pleasure and are members of the Federal Executive Council, and constitute the Ministry.

1 Art. 57. 2 Art. 58. 3 Art. 58. 4 Art. 59.
5 Art. 60. 6 Arts. 61, 62. 7 Art. 63.

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They must be members of the Parliament. They may not exceed seven in number, and hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.[1]

The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the King's representative.[2]

In respect of matters which, under the Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth were vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.[3]

The judicial power of the Commonwealth is vested in a Federal Supreme Court, called the High Court of Australia, and in such other federal courts as the Parliament may create, and in such other courts as it may invest with federal jurisdiction. The High Court consists of a Chief Justice, and two other Justices.[4] The Justices of the High Court and of the other courts created by the Parliament are appointed by the Governor-General in Council, and cannot be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity. They receive remuneration fixed by the Parliament, but the remuneration cannot be diminished during their continuance in office.[5]

The High Court has jurisdiction to hear and determine appeals from all judgments, decrees, orders, and sentences of any Justice or Justices exercising the

[1] Arts. 64, 65. [2] Art. 68. [3] Art. 70.
[4] Art. 71. [5] Art. 72.

original jurisdiction of the High Court; of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the King in Council; and of the Inter-State Commission, but as to questions of law only. Its judgment in all such cases is final and conclusive. No exception or regulation prescribed by the Parliament is to prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lay from such Supreme Court to the King in Council. The conditions of and restrictions on appeals to the King in Council from the Supreme Courts of the several States are applicable to appeals from them to the High Court.[1]

No appeal is permitted to the King in Council from a decision of the High Court upon any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or more States, unless the High Court certifies that the question is one which ought to be determined by His Majesty in Council. The High Court may so certify if satisfied that for any special reason the certificate should be granted; and thereupon an appeal shall lie to His Majesty in Council on the question without further leave. Except as thus provided, the Constitution may not impair any right which the King may be pleased to exercise by virtue of His Royal prerogative to grant special leave of appeal from the High Court to His Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked; but proposed laws containing any such limitation shall be reserved by the Governor-General for His Majesty's pleasure.[2]

1 Art. 73. 2 Art. 74.

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In all matters arising under any treaty; or affecting consuls or other representatives of other countries; or in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party; or between States, or residents of different States, or between a State and a resident of another State; or in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth; the High Court has original jurisdiction.[1] The Parliament may make laws conferring original jurisdiction on the High Court in any matter arising under the Constitution, or involving its interpretation; or arising under any laws made by the Parliament; or of Admiralty and maritime jurisdiction; or relating to the same subject-matter claimed under the laws of different States.[2] With respect to any of the matters mentioned in this paragraph the Parliament may make laws defining the jurisdiction of any federal court other than the High Court; defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States; investing any court of a State with federal jurisdiction.[3]

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed; and if the offence was not committed within any State, the trial shall be held at such place or places as the Parliament prescribes.[4]

Provision is made for the creation of a Consolidated Revenue Fund,[5] expenses of collection, management, &c.,[6] transfer of officers and departments,[7] and distribution of revenue between the Commonwealth and the States;[8] for uniform duties of customs and their imposition by the Parliament,[9] except in the case of

[1] Art. 75. [2] Art. 76. [3] Art. 77. [4] Art. 80. [5] Art. 81.
[6] Arts. 82, 83. [7] Arts. 84, 85. [8] Art. 87. [9] Arts. 88–90.

certain bounties;[1] for free trade among the States;[2] for financial assistance of any State by the Parliament;[3] for audit[4]; prohibiting preference of one State over another by the Commonwealth,[5] or any abridgment of the right to waters of rivers for conservation or irrigation;[6] for the appointment of an Inter-State Commission for the execution and maintenance of the provisions of the Constitution relating to trade and commerce, and of all laws made thereunder;[7] for the prevention of railway preferences or discriminations by any State, if adjudged by the Inter-State Commission to be undue or unreasonable or unjust to any State;[8] for the taking over by the Parliament of the public debts of the States.[9]

There are saving clauses as to the Constitutions, Parliaments and Laws of the States.[10] In case of inconsistency between a law of a State and a law of the Commonwealth, the latter is to prevail.[11] Power is reserved to the States to surrender territory,[12] levy charges for inspection laws,[13] and to legislate as to intoxicating liquids.[14] But the States are prohibited from raising forces or taxing Commonwealth property,[15] coining money or making anything but gold and silver coin legal tender,[16] or discriminating against resident subjects of other States.[17] The Commonwealth may not tax State property,[15] nor legalise in respect of religion,[18] and is to protect every State against invasion and domestic violence.[19] Each State is to provide for the custody and punishment of offenders against the laws of the Commonwealth.[20]

Provision is made for the admission, establishment and formation of new States,[21] for the government of territories introduced into the Commonwealth,[22] and for the alteration of the limits of States.[23]

1 Art. 91. 2 Art. 92. 3 Art. 96. 4 Art. 97.
5 Art 99. 6 Art. 100. 7 Arts. 101, 103. 8 Art. 102.
9 Art. 105. 10 Arts. 106–108. 11 Art. 109. 12 Art. 111.
13 Art. 112. 14 Art. 113. 15 Art. 114. 16 Art. 115.
17 Art. 117. 18 Art. 116. 19 Art. 119. 20 Art. 120.
21 Arts. 121, 124. 22 Art. 122. 23 Art. 123.

The King may authorise the Governor-General to appoint a deputy or deputies within any part of the Commonwealth to exercise during his pleasure such powers and functions as he thinks fit to assign to him or them subject to any limitations expressed or directions given by the King; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.[1]

In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.[2]

The Constitution cannot be altered except by a law passed by an absolute majority of each House of the Parliament, and submitted in each State not less than two nor more than six months afterwards to the electors qualified to vote for the election of members of the House of Representatives. Provision is made for disagreement between the Houses. Until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails. And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the King's assent.[3]

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the mininum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law, unless the majority of the electors voting in that State approve the proposed law.[4]

[1] Art. 126. [2] Art. 127. [3] Art. 128. [4] Art. 128.

By 25 & 26 Vict. c. 11 every Act passed by the Legislative Council of New South Wales, Victoria, Van Diemen's Land, or South Australia to establish, instead of the Legislative Council, a Council and House of Representatives or other separate legislative Houses, to consist respectively of such members, to be appointed or elected respectively by such persons and in such manner as by such Act should be determined, and to vest therein the powers and functions of the Legislative Council for which the same might be substituted, and assented to in His Majesty's name by the Governor, shall be deemed to be and to have been from the date of such assent as valid and effectual for all purposes whatever as if the same Act had been reserved for the signification of His Majesty's pleasure, and as if the same had been duly laid before both Houses of Parliament, and as if His Majesty's assent had been duly given to the same and signified in the colony at the date aforesaid.[1]

Further, every Act passed by any colonial legislature established under any such Acts or Act as aforesaid for altering the constitution or mode of election or appointment of any or either of the legislative bodies composing such legislature, which may have been at any time theretofore assented to in His Majesty's name by the Governor, shall be deemed to be and to have been from the date of such assent as valid and effectual for all purposes whatever as if it had been reserved for the signification of His Majesty's pleasure therein, and as if His Majesty's assent had been duly given thereto and signified in the colony at the date last aforesaid.[2]

New South Wales.

The Imperial Act, 18 & 19 Vict. c. 54, empowered Her Majesty to assent to the Bill passed by the Legislative Council of New South Wales in 1853 to confer

[1] S. 1. [2] S. 3.

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a Constitution on the colony, and contained in Schedule I. of the Act.[1] The provisions in former Acts respecting the allowance and disallowance of Bills by His Majesty, and the reservation of Bills for the signification of His Majesty's pleasure thereon, are maintained.[2] Power is given to the new legislature to alter or repeal the provisions of the scheduled Bill.[3] By this Bill, which became the Act of New South Wales 17 Vict. No. XLI., the Legislature consists of His Majesty together with a Legislative Council and a Legislative Assembly; taxation and appropriation Bills to originate in the Assembly.[4]

The *Legislative Councillors*, to the number of not less than twenty-one, are appointed by the Governor with the advice of the Executive Council for life, and must be twenty-one years of age, natural born or naturalised subjects of His Majesty; not less than four-fifths of their number being persons not holding any office of emolument under the Crown, except officers of His Majesty's sea and land forces.[5] Members may resign by letter to the Governor,[6] and vacate their seats by absence without permission for two successive sessions,[7] or by becoming subjects or citizens of any foreign power, or becoming bankrupt, or being attainted of treason, or convicted of felony or any infamous crime.[8] At present the Legislative Council consists of sixty-one members.

The *Legislative Assembly* is elected by the inhabitants of the colony, being twenty-one years of age, free natural born or naturalised subjects of His Majesty, or legally made citizens of the colony, with a property qualification. But no man can vote who has been attainted or convicted of treason or felony or other infamous offence in any part of H.M.'s dominions,

1 S. 1. 2 S. 3. 3 S. 4. 4 17 Vict. No. XLI., s. 1.
5 Ibid. ss. 2, 3. 6 Ibid. s. 4.
7 *Vide A.-G. of Queensland* v. *Gibbon*, L. R. 12 App. 442, 56 L. J. P. C. 64, decided under a similar provision in the Queensland Constitution Act of 1867; see *post*, p. 117. 8 17 Vict. No. XLI., s. 5.

unless he have been pardoned or have undergone his sentence; nor unless at the time of registration he have paid up all his rates and taxes, except such as have become payable during three calendar months next before such registration.[1] At present the Legislative Assembly consists of ninety members. Any free person qualified and registered as a voter in any electoral district may be elected a member of the Assembly;[2] except a member of the Legislative Council.[3] No person holding an office of profit under the Crown is capable of being elected, sitting, or voting as a member of the Legislative Assembly, unless he be Colonial Secretary, Colonial Treasurer, Auditor-General, Attorney-General, or Solicitor-General, or one of not more than five additional officers whom the Governor, with the advice of the Executive Council, may from time to time by notice in the Government *Gazette* declare capable of being so elected;[4] or unless he is an officer in H.M.'s navy or army.[5] Ministers of religion are incapable of being elected to or of sitting or voting in the Assembly.[6] Members of the Assembly may resign their seats by writing under their hands addressed to the Speaker.[7] A member vacates his seat by absence for one whole session without permission, or by becoming a subject or citizen of any foreign power, or becoming bankrupt or insolvent or a public defaulter, or by being attainted of treason, or convicted of felony or any infamous crime.[8] Contractors for the public service and persons interested in such contracts are disqualified from being summoned or elected, or sitting or voting, as members of the Legislative Council or Assembly; and persons entering into such contracts vacate their seats; but the disqualification does not extend to contracts with an incorporated or trading company consisting of more

1 S. 11. For the electoral districts see s. 13.
2 S. 16. 3 S. 17. 4 S. 18. 5 S. 19.
6 S. 20. 7 S. 25. 8 S. 26.

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than twenty persons.[1] A penalty of £500 is imposed on persons thus disqualified for sitting and voting.[2] One session at least of Parliament must be held each year.[3] The Legislature has power to alter any provision of the Constitution Act, but any Bill for such a purpose must be passed with the concurrence of two-thirds of the number for the time being of the Legislative Council and Assembly respectively, and must be reserved for the signification of H.M.'s pleasure thereon, and a copy thereof laid before both Houses of the Imperial Parliament for at least thirty days previously.[4] All existing laws are continued in operation until altered by the Legislature,[5] as also all Courts, &c.[6] The Legislature may make laws as to sale and other disposal of waste lands,[7] and for levying customs duties.[8] Provision is made for a consolidated revenue fund,[9] expenses of collection, &c.,[10] appropriation of revenue,[11] and recommendation by Governor of money votes.[12]

By s. 133 of the New South Wales Customs Regulation Act, 1879, it was enacted that whenever any article of merchandise then unknown to the collector is imported, which, in the opinion of the collector or the commissioners, is apparently a substitute for any known dutiable article, or is apparently designed to evade duty, but possesses properties in the whole or in part which can be used or were intended to be applied for a similar purpose as such dutiable article, it shall be lawful for the Governor to direct that a duty be levied on such article at a rate to be fixed in proportion to the degree in which such unknown article approximates in its qualities or uses to such dutiable article; and such rate then fixed shall be published in a Treasury order in the *Gazette* and one other newspaper published in Sydney, and

1 S. 28; *vide Miles* v. *McIlwraith*, L. R. 8 App. 120, 52 L. J. P. C. 17, decided under a similar provision in the Queensland Constitution Act, 1867; see *post*, p. 117. 2 S. 29. 3 S. 31. 4 S. 36; but *vide ante*, p. 107.
5 S. 41. 6 S. 42. 7 S. 43. 8 S. 45.
9 S. 47. 10 S. 48. 11 S. 53. 12 S. 54.

exhibited in the Long Room or other public place in the Customs House, and a copy of all such Treasury orders shall, without unnecessary delay, be laid before both Houses of Parliament. It was held by the Judicial Committee of the Privy Council in *Powell* v. *Apollo Candle Co.*[1] that this section was within the plenary powers of legislation conferred upon the New South Wales Legislature by ss. 1 and 45 of the Constitution Act, scheduled to 18 & 19 Vict. c. 54; and further that duties levied by an Order in Council issued under the section are really levied by authority of the Legislature and not of the Executive; and that the opinion of the collector mentioned in the section, whether right or wrong, authorises the action of the Governor.

In *Harris* v. *Davies*[2] it was decided by the Judicial Committee of the Privy Council that the Legislature of New South Wales had power to repeal the statute 21 Jac. 1, c. 16, s. 6, as to costs in actions for slander where less than 40*s.* damages are recovered, and had impliedly done so by 11 Vict. No. 13, s. 1, which placed an action for words spoken on the same footing as to costs and other matters as an action for written slander.

A member of the Legislative Assembly of New South Wales having entered the Chamber within a week after it had passed a resolution that he be suspended from the service of the House, he was removed therefrom and prevented from re-entering. In an action of trespass against the Speaker it was held, on appeal to the Judicial Committee of the Privy Council, that the resolution must not be construed as operating beyond the sitting during which the resolution was passed; and further, that the standing order of the Legislative Assembly, adopting so far as is applicable to its proceedings the rules, forms, and usages in force

[1] L. R. 10 App. 282; 54 L. J. P. C. 7, see *ante*, p. 59.
[2] L. R. 10 App. 279; 54 L. J. P. C. 15.

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in the British House of Commons, and assented to by the Governor, was valid, but must be construed to relate only to such rules, forms, and usages as were in existence at the date of the order. The powers incident to or inherent in a Colonial Legislative Assembly are such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute; and do not extend to justify punitive action, or unconditional suspension of a member during the pleasure of the Assembly.[1]

Victoria.

By 18 & 19 Vict. c. 55 Her Majesty in Council was empowered[2] to assent to the Bill passed by the Legislative Council of the colony for establishing a Constitution in and for the colony of Victoria, and contained in Schedule I to the Act. Power was given by the same Act to the Legislature of Victoria to alter or repeal any of the provisions of the scheduled Bill.[3] By the Bill which thus became the Constitution Act were established a Legislative Council and a Legislative Assembly, to meet at least once a year,[4] both elective;[5] the members of the former body (now 35 in number) retiring in rotation,[6] those of the latter (now 68 in number) being elected for five (now three) years subject to the Governor's power of dissolution.[7]

Members of either House may resign by writing addressed to the Governor or Speaker respectively;[8] and vacate their seats by failure to attend for one entire session without permission, or becoming subjects or citizens of any foreign power, or becoming bankrupt or insolvent, or being attainted of treason, or convicted of felony or any infamous crime, or becoming *non compos mentis*.[9] Public contractors are incapable of

1 *Barton* v. *Taylor*, L. R. 11 App. 197; 55 L. J. P. C. 1.
2 S. 1. 3 S. 4; and see ss. 60, 61 of the Colonial Act.
4 S. 1 of the Colonial Act. 5 Ss. 2, 10. 6 S. 3.
7 S. 19. 8 Ss. 8, 23. 9 S. 24.

being elected, sitting, or voting as members of the Legislature under a penalty.[1] Existing laws are maintained in force until altered.[2] Provisions are made for convocation, prorogation, and dissolution;[3] standing rules and orders;[4] definition of privileges;[5] appointment to public offices;[6] customs duties;[7] consolidated revenues;[8] civil list;[9] pensions;[10] waste lands.[11] The Legislature is also empowered to repeal, alter, or vary all or any of the provisions of the Act and substitute others, and to alter the qualification of electors and members, and to establish and vary electoral provinces or districts, &c.[12]

Van Diemen's Land, or Tasmania.

By 13 & 14 Vict. c. 59 the Legislature then existing in the colony was empowered to establish therein a Legislative Council, of which one-third of the members were to be appointed by Her Majesty and the remainder elected by the inhabitants of the colony.[13] This newly established Legislative Council was also empowered by Act or Acts to establish in the colony, instead of itself, a Council and a House of Representatives, or other separate Legislative Houses, to consist respectively of such members, to be appointed or elected respectively by such persons and in such manner, as by such Act or Acts should be determined, and to vest therein its own powers and functions.[14] This power has been exercised;[15] and the Legislature of the colony now consists of the Governor, a Legislative Council of 18 members elected for six years, and a House of Assembly of 35 members elected for three years.

1 Ss. 25, 26; see *post*, p. 115. 2 S. 40.
3 S. 28. 4 S. 34. 5 S. 35. 6 S. 37.
7 S. 43. 8 Ss. 44, 45. 9 Ss. 46, 47. 10 Ss. 49, 50, 51, 52.
11 S. 54. 12 Ss. 60, 61; and see s. 4 of the Imperial Act.
13 S. 7. 14 S. 32.
15 By 17 & 18 Vict. No. 17, supplemented by 34 Vict. No. 2 and 49 Vict. No. 12.

South Australia.

South Australia.

A constitution was granted to this colony by the Act 13 & 14 Vict. c. 59, by which the Legislature was to consist of the Governor and a Legislative Council of not more than 24 members, of which one third were to be appointed by Her Majesty and the rest elected by the inhabitants of the colony.[1] By s. 32 of the Act it was, however, enacted that it should be lawful for the Legislature established thereby to establish in the colony instead of the Legislative Council a Council and House of Representatives, to be appointed or elected by such persons and in such manner as the Legislature should determine, with the powers and functions of the Legislative Council superseded thereby; any Bill for such purpose to be reserved for the signification of Her Majesty's pleasure thereon, and a copy to be laid before both Houses of Parliament for thirty days at least previously.[2]

These powers have been exercised; and the Parliament of the colony now consists of the Governor, a Legislative Council of 18 members elected by ballot one third retiring in rotation every three years, and a House of Assembly of 42 members elected for three years, but liable to dissolution by the Governor. A member of the Council must be thirty years old, a subject of the King, and a resident of three years' standing; and an elector must be twenty-one years old, a subject of His Majesty, on the electoral roll for six months, with a property qualification. A member of the Assembly must be qualified as an elector; and an elector's qualification is the same as that of an elector for the Council without the property.

Queensland.

The Act 24 & 25 Vict. c. 44 was passed, among other reasons, to validate and effectuate the Order in

1 S. 7.

2 But see *ante*, p. 65.

Council of June 6, 1859, establishing a Legislature in the colony, and all Acts and proceedings thereof.[1] The Order in Council provided for a nominated Legislative Council and an elective Legislative Assembly, but empowered the Legislature to alter or repeal all the provisions of the Order in Council with certain exceptions.[2] This power has been exercised[3]; and the Legislature consists of the Governor, a Legislative Council or Upper House of 40 members nominated by the Governor for life, and a Legislative Assembly or Lower House of 72 members elected by ballot, every man of twenty-one years of age who has resided six months in one locality having a vote; persons having property, leasehold or freehold, or a Government licence to depasture land, having a vote in the district where the property is situate as well. No property qualification is required for membership in either House.

The Queensland Constitution Act of 1867[4] by s. 6 enacts that "any person who shall directly or indirectly, himself or by any person whatsoever in trust for him or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in the whole or in part, any contract or agreement for or on account of the public service, shall be incapable of being summoned or elected or of sitting or voting as a member of the Legislative Council or Legislative Assembly during the time he shall execute, hold, or enjoy any such contract or any part or share thereof, or any benefit or emolument arising from the same; and if any person, being a member of such Council or Assembly, shall enter into any such contract or agreement, or having entered into it shall continue to hold it, his seat shall be declared by the said Legislative Council or Legislative Assembly, as the case may require, to be void, and

[1] See s. 3.
[2] Cl. 22.
[3] By 31 Vict. No. 38 of the colony.
[4] 31 Vict. No. 38.

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thereupon the same shall become and be void accordingly. Provided always that nothing herein contained shall extend to any contract or agreement made, entered into, or accepted by any incorporated company or any trading company consisting of more than twenty persons, where such contract or agreement shall be made, entered into, or accepted for the general benefit of such incorporated or trading company." By s. 7 it is enacted that "if any person by the Act disabled or declared to be incapable to sit or vote in the Legislative Council or Legislative Assembly shall nevertheless be summoned to the said Council, or elected and returned as a member to serve in the said Assembly for any electoral district, such summons or election and return shall and may be declared by the said Council and Assembly, as the case may require, to be void, and thereupon the same shall become and be void to all intents and purposes whatsoever; and if any person under any of the disqualifications mentioned in the last preceding section shall, whilst so disqualified, presume to sit or vote as a member of the said Council or Assembly, such person shall forfeit the sum of £500, to be recovered by any person who shall sue for the same in the Supreme Court of Queensland." In an action to recover penalties against the defendant for having, contrary to this enactment, sat in the Legislative Assembly as a member and voted therein, it appeared that McIlwraith, McEacharn and Co. had in 1878, "for and on behalf of the owners of the ship *Scottish Hero*," but contrary to the express direction of the defendant (one of such owners), concluded a charter-party with the local Government; that such charter-party was made in pursuance of an agreement between McIlwraith, McEacharn and Co. and the Government to supply ships of a particular description to carry emigrants, which agreement did not provide for any privity of contract between the owners of such ships and the Government; that McIlwraith,

McEacharn and Co. were the general agents of the defendant to charter ships in which he held shares, and that one of the firm was registered as managing owner of the *Scottish Hero*, and that it was neither alleged nor proved that the Government ever knew that McIlwraith, McEacharn and Co., or any member of that firm, had general authority to bind the defendant, and had acted upon the belief that such general authority continued unrestricted. Under such circumstances it was decided that the Government could not have held the defendant bound to them, and consequently that he was not disqualified under the Act. It was left undecided whether, in the absence of any notice to the Government of such special restriction, the general authority of the agent, if known to the Government, would have sufficed to bind the defendant so as to disqualify him under the Act.[1]

The Queensland Constitution Act, 1867,[2] provided in ss. 23, 24, that "if any legislative councillor shall for two successive sessions fail to give his attendance without permission, his seat shall thereby become vacant." A councillor absented himself during the whole of three sessions, having previously obtained permission for a year, which period of time in the event covered the whole of the first and part of the second session. It was held that his seat was vacated, the permission not covering two successive sessions.[3]

Western Australia.

By 53 & 54 Vict. c. 26 Her Majesty was empowered[4] by Order in Council to assent to the Bill scheduled in the Act for conferring a constitution on Western Australia. But the provisions of the Acts 13 & 14 Vict. c. 59 and 5 & 6 Vict. c. 76, relating to the giving or withholding His Majesty's assent to Bills

[1] *Miles* v. *McIlwraith*, L. R. 8 App. 120; 52 L. J. P. C. 17.
[2] 31 Vict. No. 38.
[3] *Attorney-General of Queensland* v. *Gibbon*, L. R. 12 App. 442; 56 L. J. P. C. 64.
[4] S. 1.

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and the reservation of Bills for the signification of His Majesty's pleasure thereon and the instructions to Governors in relation thereto, and the disallowance of Bills by His Majesty, are to apply to Bills passed by the new or any substituted Legislature.[1] The new Legislature has the entire management and control of the waste lands of the Crown in the colony.[2] Power is given to His Majesty by Order in Council to divide and subdivide the colony and form separate colonies under such form of government and legislature as he may think fit, or to unite any part or parts to any other Australian colony; in which event the scheduled Bill and the Act is to apply as far as practicable to the colony of Western Australia as then existing.[3]

The scheduled Bill established a *Legislative Council* and a *Legislative Assembly*[4] to sit once a year.[5] The *Council* is to consist of 15 members (five to be a quorum),[6] summoned in the first place by the Governor,[7] but after six years from the first summoning thereof or when the population of the colony has reached 60,000, whichever first happens, to become elective,[8] five members retiring by rotation every two years.[9] No member of the Council is to hold any office of profit under the Crown except political office or in the army or navy.[10] The *Legislative Assembly* consists of 30 members elected by defined electoral districts[11] for four years from the return of the writ, subject to prorogation or dissolution by the Governor;[12] ten to be a quorum.[13] Members of either Council or Assembly must be natural born or naturalised subjects of His Majesty, twenty-one years of age, seised at law or in equity of a freehold estate within the colony of the net value of £500, or the yearly value of £50, and possessed thereof for at least one year previous to the

1 S. 2*a*. 2 S. 3. 3 S. 6. 4 S. 2.
5 S. 4. 6 S. 10. 7 S. 6. 8 Ss. 42, 44, 45.
9 Ss. 48, 52. 10 Ss. 6, 28. 11 S. 11. 12 S. 14. 13 S. 16.

election.[1] No person can be a member of either House if he

(1) be a member of the other House;
(2) be a judge of the Supreme Court;
(3) be the sheriff of Western Australia;
(4) be a clergyman or minister of religion;
(5) be an undischarged bankrupt or liquidating or arranging debtor; or
(6) has been in any part of His Majesty's dominions attainted or convicted of treason or felony.[2]

Persons holding contracts for the public service are also incapable of being elected or sitting or retaining their seats.[3] A member of either House vacates his seat if he

(1) ceases to be qualified or becomes disqualified;
(2) becomes of unsound mind;
(3) swears or declares or acknowledges allegiance, obedience, or adherence to any foreign prince or power, or does, concurs, or adopts any act whereby he may become a subject or citizen of any foreign state or power, or entitled to the rights, privileges, or immunities of such;
(4) is absent from his seat for two consecutive months of any session without permission of the House; or
(5) accepts any pension or office of profit from the Crown other than in the army or navy; but members accepting political office may be re-elected or re-nominated.[4]

The privileges, immunities, and powers of the two Houses and their members may be defined by the Legislature; but may not exceed those for the time being of the Commons House of Parliament or its

[1] S. 18. [2] S. 23.
[3] Ss. 24, 25. See *Miles* v. *McIlwraith*, L. R. 8, App. 120; 52 L. J. P. C. 17; *ante*, p. 116, on a similar provision in the Queensland Constitution Act. [4] S. 29.

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Western Australia.

members.[1] To be an elector of the Assembly a man must be

(1) of full age and not subject to any legal incapacity;

(2) a natural born or naturalised subject of His Majesty, or a denizen of Western Australia;

(3) possessed for at least one year before registration and within the electoral district for which he seeks registration of

(*a*) a freehold estate in possession at law or in equity of the clear net value of £100; or

(*b*) a leasehold estate in possession of the clear value of £10 per annum; or

(*c*) a lease or licence from the Crown at £10 per annum at least to depasture, occupy, cultivate, or mine Crown lands;

(4) in occupation for at least one year before registration, and within the electoral district for which he seeks registration,

(*a*) as householder of a dwelling-house of the clear value of £10 per annum; or

(*b*) as lodger of a room or rooms or lodgings of the clear annual value unfurnished of £10.[2]

To be an elector of the Council a man must have the same qualification as for the Assembly, except that the clear net value of his freehold must be £200, or of his leasehold £30, or of his lease or licence from the Crown £30, and his qualifying dwelling-house must be of the net clear value of £30 per annum; while there is no lodger franchise.[3] No man can vote at any election of either House who has been attainted or convicted of treason, felony, or any infamous offence

[1] S. 36. [2] S. 39. [3] S. 53.

in any part of His Majesty's dominions, unless he has served his sentence, or received a free pardon or a pardon conditional on not leaving the colony.[1] All money bills must originate in the Assembly.[2] No Bill effecting any change in the Legislature can be presented to the Governor for the Queen's assent unless the second and third readings have been passed by an absolute majority of the whole number of the members for the time being of each House respectively.[3]

New Zealand.

A constitutional form of government was conferred upon this colony by 15 & 16 Vict. c. 72. That Act established a General Assembly, consisting of the Governor, a Legislative Council whose members are appointed by the Governor for life,[4] and an elective House of Representatives,[5] now consisting of 74 members, including four Maori members elected by the natives. The members of the two Houses may resign their seats by writing addressed to the Governor or Speaker respectively,[6] and vacate their seats by absence,—the Councillors for two successive sessions, the Representatives for one session,—without permission, or by becoming subjects or citizens of any foreign state or power, or bankrupt or insolvent, or by being attainted of treason or convicted of felony or any infamous crime.[7] Money bills must originate in the House of Representatives.[8]

South Africa.

By the South Africa Act, 1877 (40 & 41 Vict. c. 47), s. 58 (the only part of the Act left unrepealed), the King may, with the advice of his Privy Council, authorise the annexation to the Cape of Good Hope of the whole or any portion or portions of any of his possessions in South Africa; but not

1 S. 59. 2 S. 66. 3 S. 73. 4 Ss. 32–34.
5 Ss. 40–43. 6 Ss. 35, 49. 7 Ss. 36, 50. 8 S. 54.

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until the Legislature of the Cape of Good Hope has passed a law providing that such territories shall form part of the colony.

Cape of Good Hope.

Cape of Good Hope.

Responsible government in this colony dates from 1872, in which year the colonial legislature (then of the representative type established under Letters Patent dated May 23, 1850) passed an Act providing for it, which was subsequently assented to by Her Majesty by an Order in Council dated August 9, 1872. The Legislature consists of the Governor, and a Legislative Council of 26 and a House of Assembly of 107 members, both elected by the same voters with a property qualification.

Section 3.

Sect. 3. Privileges and powers of colonial Assemblies.

The nature and extent of the privileges and powers of colonial Legislative Assemblies have on more than one occasion been the subject of discussion before the Judicial Committee of the Privy Council.

In an action against the Speaker of the House of Assembly of Jamaica and certain magistrates and constables for trespass and false imprisonment [1] it was laid down that the power of punishing contempts is inherent in every Assembly possessing supreme legislative authority, whether such as tend indirectly to obstruct proceedings, or such as tend directly to bring authority into contempt.

That case, however, was overruled by *Kielley* v. *Carson*,[2] in which an action for assault and battery and false imprisonment was brought against the Speaker and certain other members and officers of the House of Assembly of Newfoundland. The judgment of the Judicial Committee was delivered

[1] *Beaumont* v. *Barrett*, 1 Moo. P. C. C. 59.
[2] 4 Moo. P. C. C. 63.

in cautious terms by Mr. Baron Parke, who had also delivered that in *Beaumont* v. *Barrett*. It declared that the House of Assembly of Newfoundland did not possess the power of arrest with a view to adjudication on a complaint of contempt committed out of its doors, no such privilege having been expressly conferred upon it by the Crown, and such an authority not being a necessary incident to the creation of a local legislature.

In the same judgment it was laid down that the power of committal enjoyed by the House of Commons in England was held, not because it was a representative body with legislative functions, but by virtue of ancient usage and prescription, the *lex et consuetudo Parliamenti*, which forms a part of the common law of the land.

The same question was discussed in *Fenton* v. *Hampton*.[1] There the Legislative Council of Van Diemen's Land had appointed a committee of themselves to inquire into alleged abuses of the convict department, with leave to send for persons in order to prosecute the inquiry. The respondent, who was a comptroller-general of convicts in the island, was summoned, but refused to appear, and eventually was adjudged guilty of contempt by the Council; and on their resolution the Speaker, one of the appellants, issued his warrant for the apprehension of the respondent, who was accordingly taken into custody. For this an action of trespass was brought in the Supreme Court of the colony, in which judgment was given for the respondent. On appeal the Judicial Committee said the principal point involved the constitutional rights and authority of the legislative bodies in various parts of Her Majesty's colonial territories; and decided that the case of *Kielley* v. *Carson*,[2] where their lordships were of opinion that the House of Assembly did not possess the power of

[1] 11 Moo. P. C. C. 347. [2] 4 Moo. P. C. C. 63.

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arrest with a view to adjudication on a complaint of contempt committed out of its doors, bound them. They also stated that there was no ground for the distinction attempted to be drawn between cases where the authority of legislative bodies was derived from the Crown, and the then present case where the authority was derived from a statute of the Imperial Parliament. The *lex et consuetudo Parliamenti* apply exclusively to the Lords and Commons of this country, and do not apply to the Supreme Legislature of a colony by the introduction of the common law there.[1]

A member of the legislative assembly of Dominica having been committed to prison for a contempt committed in the face of the assembly, it was argued that the previous cases of *Kielley* v. *Carson*[2] and *Fenton* v. *Hampton*[3] were distinguishable, having merely decided that the House of Assembly could not punish for a contempt committed out of the House. The Judicial Committee, however, on appeal decided that from the existence of the privileges of the House of Commons in England it could not be argued that like powers belonged to legislative assemblies of comparatively recent creation in the dependencies of the Crown; that there was no resemblance between a colonial House of Assembly and a Court of justice being a Court of record, and no ground for saying the power to punish for contempt, inherent in the one, is by analogy inherent in the other; that the principle in the common law, *quando lex aliquid concedit, concedere videtur et illud sine quo res ipsa esse non potest*, warranted no more than the right to remove for self-security, not to inflict punishment; and therefore that the House of Assembly did not possess authority to commit and punish for contempts committed and

1 The House of Keys, in the Isle of Man, has not, simply because it is invested with legislative functions, the power to commit for contempt: *In re Brown*, 33 L. J. Q. B. 193.

2 4 Moo. P. C. C. 63.

3 11 Moo. P. C. C. 347.

interruptions and obstructions given to its business by its members or others in its presence and during its sitting.[1] On a subsequent occasion the same high tribunal stated that the powers incident to or inherent in a colonial Legislative Assembly are such as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute, and do not extend to justify punitive action or unconditional suspension of a member during the pleasure of the Assembly.[2]

In another case[3] the power of the Legislative Assembly of Victoria to commit for contempt was argued upon a different footing. That Assembly was constituted under a Colonial Act passed in 1854, ratified and set forth in the 1st schedule to the Imperial Statute 18 & 19 Vict. c. 55,[4] by which statute a Legislative Council and a Legislative Assembly were to be constituted; and providing in s. 35 that the Legislature of Victoria should "define" the privileges, immunities, and powers to be held, enjoyed and exercised by the Council and Assembly and by the members thereof respectively, provided that they should not exceed those then held, enjoyed, and exercised by the Commons House of Parliament or the members thereof.[5] By the Act 20 Vict. No. 1, passed in the first colonial Parliament held under the above statute, the Legislative Council and Assembly and their committees and members were clothed with such and the like privileges, immunities, and powers as at the time of the passing of the Constitution Act were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland and by the committees and members thereof, so far as the same

1 *Doyle* v. *Falconer*, L. R. 1 P. C. 328.
2 *Barton* v. *Taylor*, L. R. 11 App. 197; 55 L. J. P. C. 1.
3 *Dill* v. *Murphy*, 1 Moo. P. C. C., N. S., 487.
4 See *ante*, p. 112.
5 There is a corresponding provision in the Canada Act. 38 & 39 Vict. c. 38. s. 1, and in the Western Australia (Colonial) Constitution Act, s. 36 (*ante*, p. 119).

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were not inconsistent with the Constitution Act. Printed copies of the Journals of the House of Commons were made *primâ facie* evidence of the privileges, immunities, and powers of the Council or Assembly or any committee or members thereof. On the construction of this Act it was held that the privileges of the colonial Council and Assembly had been sufficiently defined by it; and that the Legislative Assembly had power to commit the appellant for contempt in publishing a libel upon one of its members.

In *The Speaker of the Legislative Assembly of Victoria* v. *Glass*[1] the decision in *Dill* v. *Murphy* was extended. In that case the respondent had been committed to gaol for a contempt and breach of the privileges of the House by a general warrant of the appellant, which stated on its face that the Legislative Assembly had resolved that the respondent was guilty of a contempt and breach of privilege of the Legislative Assembly. The respondent obtained a writ of *habeas corpus* addressed to the keeper of the gaol; and on the argument upon the return, setting out two general warrants of the appellant, the Chief Justice and two other judges of the Supreme Court in Victoria had made an order for the discharge of the respondent, which the full court had declined to rescind. On appeal the Judicial Committee came to the conclusion, following *Dill* v. *Murphy*, that, the Legislature of the colony having been permitted to carry over to the colony the privileges, immunities, and powers of the House of Commons, and having in terms carried over all the privileges and powers exercised by the House of Commons at the date of the statute, there was carried over to the legislative Assembly of the colony the privilege or power of the House of Commons connected with contempt, the privilege or power, namely, of committing for contempt, of judging itself of what is contempt, and of committing for contempt by

[1] L. R. 3 P. C. 560; 40 L. J. P. C. 17.

warrant stating generally that a contempt had taken place.

In *Fielding* v. *Thomas*,[1] on appeal from Nova Scotia, the Judicial Committee observed that according to the decisions of their Board a provincial legislature could not confer on itself the privileges of the House of Commons of the United Kingdom, or the power to punish the breach of those privileges by imprisonment or committal for contempt, without express authority from the Imperial Legislature. But they went on to cite s. 5 of the Colonial Laws Validity Act, 28 & 29 Vict. c. 63 (*post* p. 130), by which every colonial legislature has full power to make laws respecting its constitution, powers, and procedure; and they decided that the sections of c. 3 of the local (Nova Scotia) Revised Statutes, 5th series, which created the jurisdiction of the House of Assembly and indemnified its members against legal proceedings in respect of their votes therein, was a complete answer to an attempt to enforce civil liability for acts done and words spoken in the House. Those sections, except so far as they might be deemed to confer a criminal jurisdiction otherwise than as incident to the protection of members, were *intra vires* of the local legislature as relating to the constitution of the province within the meaning of s. 92 of the British North America Act, 1867.

In *A.-G. for New South Wales* v. *Rennie*[2] it was held that the phrase "Legislative Assembly" in s. 2 of the Act of the colony, 53 Vict. No. 12, providing for parliamentary allowances to the members, did not mean merely the particular Legislative Assembly existing at the date of the Act, but the Legislative Assembly created by the Constitution Act (17 Vict. No. XLI., assented to by Her Majesty in virtue of the Imperial Act, 18 & 19 Vict. c. 54), which, though liable to be dissolved or to expire by effluxion of time, was an

[1] L. R. (1896) A. C. 600; 65 L. J. P. C. 103.
[2] L. R. (1896) A. C. 376; 65 L. J. P. C. 52.

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essential part of the constitution and must be regarded as a permanent body.

A standing Order of a Legislative Assembly, adopting, so far as is applicable to its proceedings, the rules, forms, and usages in force in the British House of Commons, and assented to by the Governor, must be construed to relate only to such rules, forms, and usages as were in existence at the date of the Order.[1]

The 26 & 27 Vict. c. 84 confirmed all laws theretofore passed or purporting to have been passed by any colonial legislature, with the object of declaring or altering the constitution of such Legislature or of any branch thereof, or the mode of appointing or electing the members of the same.[2]

An Act having been passed to indemnify the Governor of Jamaica and certain other persons for proceedings taken by them in suppressing a rebellion in the island, it was considered by the Queen's Bench that local Legislatures having been established in our colonies with plenary power of legislation, the same comity which obtains between nations should be extended to them by the tribunals of this country, when their law conflicts with ours in respect of acts done within their jurisdiction. And the Court decided that, as it could not be disputed that it was within the competence of the local Legislature to pass the law, it effectually deprived the plaintiff of the right he would otherwise have had of maintaining an action in this country.[3]

Where a colonial statute provided that if any legislative councillor should for two successive sessions fail to give his attendance without permission, his seat should thereby become vacant; and a councillor absented himself during the whole of three sessions, having previously obtained permission for a year, which period of time in the event covered the whole of the

[1] *Barton* v. *Taylor*, L. R. 11 App. 197; 55 L. J. P. C. 1. [2] S. 2.
[3] *Phillips* v. *Eyre*, L. R. 4 Q. B. 225; ibid. 6 Q. B. 1; 40 L. J. Q. B. 28.

first and part of the second session, it was held that his seat was vacated, as the permission did not cover two successive sessions.[1]

The 28 & 29 Vict. c. 63 was passed to remove doubts as to the validity of colonial laws. After defining a colonial Legislature and a colonial law as above quoted,[2] it provides[3] that an Act of Parliament or any provision thereof shall, in construing that Act; be said to extend to any colony, when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament.

By section 2 any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

By section 3 no colonial law shall be, or be deemed to have been, void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order or regulation as aforesaid.[4] This repeals the vague limitation formerly supposed to exist, that laws made for a Crown colony must not be repugnant to the Common Law of England.[5]

By section 4 no colonial law passed with the concurrence of or assented to by the Governor of any colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative

[1] *Attorney-General of Queensland* v. *Gibbon*, L. R. 12 App. 442; 56 L. J. P. C. 64. [2] *Ante*, p. 58. [3] S. 1.

[4] *Bank of Australasia* v. *Nias*, 16 Q. B 717. As to the authority of the Legislature of Quebec to pass an Act alleged to be repugnant to the law of England or natural justice, *vide L'Union de S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31, *post*, p. 130.

[5] See Sir F. Stephen's History of the Criminal Law of England, ii. 58.

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by reason only of any instructions with reference to such law or the subject thereof, which may have been given to such Governor by or on behalf of His Majesty by any instrument other than the letters patent or instrument authorising such Governor to concur in passing or to assent to laws of peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent or last mentioned instrument.

By section 5 every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish Courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers and procedure of such Legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.

The obvious purpose and meaning of the Colonial Laws Validity Act ~~are~~ was to preserve the right of the Imperial Legislature to legislate for a colony to which a local legislature has been given, and to make it impossible for the colonial legislature to enact anything repugnant to Imperial legislation so effected; but not otherwise to derogate from the general powers of colonial legislatures.[1]

Upon section 5 of the Act a question arose in an appeal from Lower Canada[2] as to whether the Quebec Act, 33 Vict. c. 58, was repugnant to the provisions

[1] *Reg.* v. *Marais*; *ex parte Marais*, L. R. (1902) A. C. 51; 71 L. J. P. C. 32.

[2] *L'Union de S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C 31.

of the Imperial British North America Act, 1867. The provincial Act was passed to relieve a benevolent society incorporated in Montreal of pecuniary embarrassment arising from improvident regulations. The Imperial Act created a Dominion Parliament for Canada, and a Legislature for the province of Quebec; and by section 91 provided that the Dominion Parliament should have exclusive legislative authority over *inter alia* matters of bankruptcy and insolvency, which were not to be deemed matters of a local and private nature. By the next section were brought exclusively under the legislative authority of the provincial Legislature *inter alia* the establishment, maintenance, and management of eleemosynary institutions in and for the province, and generally all matters of a merely local or private nature in the province. The Judicial Committee of the Privy Council decided that the provincial Act was not an Act relating to bankruptcy or insolvency, and therefore not illegal and unconstitutional as repugnant to the Imperial Act.

No law or ordinance made by any colonial legislature for the admission of the evidence of barbarous and uncivilised persons in the colonial courts, or before the colonial magistrates, shall be null and void by reason of any repugnancy to the law of England.[1]

Colonial legislatures have no power to enact laws applying to all persons, natives of whatever country, committing certain acts in any part of the world. Their jurisdiction is confined within their own territories; and the maxim *extra territorium jus dicenti impune non paretur* applies to them.[2]

In *Ashbury* v. *Ellis*,[3] an appeal from New Zealand on the construction of 15 & 16 Vict. c. 72, it was decided that a colonial legislature may subject absentees to the local tribunals; and may authorise the local Courts,

[1] 6 & 7 Vict. c. 22, s. 1.

[2] *Macleod* v. *A.-G. for New South Wales*, L. R. (1891) A. C. 455; 60 L. J. P. C. 55.

[3] L. R. (1893) A. C. 339; 62 L. J. P. C. 107.

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in the case of contracts made or to be performed in the colony, to decide whether they will or will not proceed in the absence of the defendant. But it was added that when a judgment of any tribunal comes to be enforced in another country, its effect will be judged of by the Courts of that country with regard to all the circumstances of the case.

By s. 6 of 28 & 29 Vict. c. 63 copies of colonial laws certified by the clerk or other proper officer of any colonial legislative body are to be evidence that such laws have been passed, and any proclamation purporting to be published by the Governor in any newspaper of the colony to which any colonial law relates, signifying His Majesty's disallowance of such law, is to be *primâ facie* evidence of such disallowance. And similarly as to bills of colonial legislatures reserved for His Majesty's assent, and assented to by His Majesty.

Colonial Acts, proclamations, treaties, and other acts of State, may be proved by examined or duly authenticated copies.[1]

Colonial legislatures have power to make laws, statutes or ordinances for imparting the privileges of naturalisation; but such privileges will only be enjoyed within the limits of the colony; and the law, statute, or ordinance will be subject to be confirmed or disallowed by His Majesty in the same way as other colonial laws, statutes, or ordinances.[2]

Under this Act the following colonies have passed laws with respect to naturalisation, viz.:

Canada . . .	Act 44 Vict. c. 13.
British Honduras .	Ordinance, No. 13 of 1883; amended by Ordinance No. 8 of 1885.
Bahamas . . .	Act 35 Vict. c. 20. This only provides for the making of regulations by the Governor for certain matters in connection with the British Naturalisation Acts, 1870. The Naturalisation Act of 1878, No. 11 Vict. c. 4, remains in force.

1 14 & 15 Vict. c. 99, s. 7; *Clarke* v. *Emery*, 1 F. & F. 446.
2 33 & 34 Vict. c. 14, s. 16.

Grenada	Act of 1872, No. CCCCXLI.
Leeward Islands	Act No. 11 of 1880.
Sierra Leone	Ordinance No. 5 of 1873.
Cape of Good Hope	Act No. 2 of 1883.
Natal	Law No. 23 of 1874. Only relates to persons of European parentage or descent.
Labuan	Ordinance, 1871.
Mauritius	Ordinance No. 21 of 1872; amended by Ordinance No. 15 of 1887, and by Ordinance No. 33 of 1888.
New South Wales	Act, 1875.
Western Australia	Act, No. II. of 1871.
New Zealand	Act, 1880; amended by Act of 1882.
Fiji Islands	Ordinance, 1875.
Columbia	Law, 1896.

The following colonies have legislated with respect to naturalisation at dates previous to the Imperial Act above:

Trinidad	Ordinance No. 26 of 1868.
Bermuda	Act No. 11 of 1857.
British Columbia	Proclamation of Governor under Imperial Act, 21 & 22 Vict. c. 99, repealed by 29 & 30 Vict. c. 67, which saves instruments issued under its authority and rights or titles acquired by virtue thereof. Dated 14th May, 1859.
Newfoundland	Act, 19 Vict. c. 20.
Queensland	Act, 1867.
South Australia	Acts, No. 5 of 1864; 23 & 24 Vict. No. 20.
Tasmania	Act, 25 Vict. No. 2.
Victoria	Act, 28 Vict. No. 256.

Colonial laws made for the purpose of establishing the validity of marriages contracted in any colony are valid in all parts of His Majesty's dominions, provided that the parties to the marriage were, according to the law of England, competent to contract the same at the time of the marriage.[1] In New South Wales, Victoria, South Australia, Queensland, Western Australia, New Zealand, Tasmania, Barbados, Mauritius, and by the Parliament of the Dominion of Canada, laws have been passed making marriage with a deceased wife's sister valid in those colonies respectively; in South Australia the marriage of a man with

[1] 28 & 29 Vict. c. 64.

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the daughter of the sister of his deceased wife is also made valid.[1] But such colonial marriages seem to be of doubtful validity in the United Kingdom by reason of the proviso in the Act just quoted.[2]

By the Colonial Copyright Act (also known as the Foreign Reprints Act)[3] it is provided that in case the legislature of any British possession shall pass an Act or make an Ordinance for securing or protecting the rights of British authors in such possession, and shall transmit it to be submitted to His Majesty, it shall be lawful for His Majesty, if he thinks fit, to issue an Order in Council declaring that, so long as the provisions of such Act or Ordinance continue in force within such colony, the prohibitions contained in the Copyright Act, 1842,[4] against importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such colony; and thereupon such Act or Ordinance shall come into operation, except so far as may be otherwise directed by such Order in Council. The following colonies have placed themselves within the provisions of this Act, viz.:

Antigua . . .	Copyright Ordinance, No. 601, June 25, 1850.
Bahamas . . .	British Authors' Rights Act, No. 1208, June 5, 1849.
Barbados . . .	Act, No. 936, Dec. 29, 1848.
Bermuda . . .	Books Importation Act, No. 669, March 2, 1849.
British Guiana . .	Ordinance, No. 14 of 1851.
Canada . . .	Copyright Act, No. 780, Dec. 24, 1850.
Cape of Good Hope .	Act No. 4 of 1854.
Grenada . . .	Act No. 477, Jan. 13, 1854.
Jamaica . . .	Act No. 3924, Jan. 13, 1854. Act No. 4170, July 3, 1857. Act, 1858, c. 21.
Mauritius . . .	No. 24 of 1851.
Natal . . .	Ordinance No. 14 of 1856.
Nevis . . .	Act No. 237, March 16, 1855.

1 *Vide* Hammick's Marriage Law of England, App. xiii.

2 A bill for legalising in the United Kingdom colonial marriages with a deceased wife's sister has this year (1906) passed the House of Lords, and is expected to pass the House of Commons also this session.

3 10 & 11 Vict. c. 95. 4 5 & 6 Vict. c. 45.

New Brunswick .	Ordinance, Sept. 8, 1848.
Newfoundland . .	Books Importation Act, No. 74, Aug. 7, 1849.
Nova Scotia . .	Ordinance, Sept. 8, 1848.
Prince Edward Island	Importation of Books Act, Nov. 3, 1848.
S. Christopher . .	Books Importation Act, Nov. 20, 1849.
S. Lucia . . .	Copyright Ordinance, No. 8, Nov. 19, 1850.
S. Vincent . .	Ordinance No. 602, Aug. 27, 1852. Ordinance No. 805, Nov. 4, 1864. Ordinance No. 34, 1878.
Trinidad . . .	See Order in Council, March 17, 1875.

By the International Copyright Act, 1886,[1] where before the passing of the Act an Act or Ordinance has been passed in any British possession respecting copyright in any literary or artistic works, His Majesty in Council may make an Order modifying the Copyright Acts and International Copyright Act, so far as they apply to such British possession and to literary and artistic works first produced therein.[2]

When it is made to appear to H.M. that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade-marks, patented or registered in this country, H.M. may by Order in Council from time to time order that any person who has applied for protection for any invention, design, or trade-mark in such British possession, shall be entitled to a patent for his invention or registration for his design or trade-mark in priority to other applicants, and such patent or registration shall have the same date as that of the protection obtained in the British possession. The Order in Council is to take effect from the date mentioned for the purposes and powers in the Order ; but any Order in Council made under the Act may be revoked.[3]

By the Colonial Inland Post Office Act, 1849,[4] colonial legislatures are empowered to make laws for the establishment, maintenance, and regulation of postal communications within the respective colonies,

1 49 & 50 Vict. c. 33. 2 S. 8 (3.)

3 46 & 47 Vict. c. 57, ss. 103, 104 ; extended to trade-marks registrable under the Trade-marks Act, 1905 ; see 5 Edw. 7, c. 15, s. 65.

4 12 & 13 Vict. c. 66.

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and for charging postal rates and appropriating the revenue derived therefrom.

Privileges and powers of colonial Assemblies.

The legislature of any British colony may make laws for the admission before any court or magistrate of the evidence of barbarous and uncivilised people, destitute of the knowledge of God and of any religious belief.[1] The Act also validates any such laws that might have been made previously in any British colony.[2]

By s. 3 of the Colonial Courts of Admiralty Act, 1890,[3] the legislature of a British possession may by any law

(*a*) declare any court of unlimited civil jurisdiction, whether original or appellate, in that possession to be a colonial Court of Admiralty, and provide for the exercise by such court of its jurisdiction under the Act, and limit territorially or otherwise the extent of such jurisdiction ; and

(*b*) confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction under such regulations and with such appeal (if any) as may seem fit.

But no such colonial law shall confer any jurisdiction not by the Act conferred upon a colonial Court of Admiralty.[4] Laws made in pursuance of the Act, or affecting the jurisdiction of, or practice or procedure in, any court of such possession in respect of the jurisdiction conferred by the Act, or altering any such laws previously passed, shall, unless previously approved by His Majesty through a Secretary of State, either be reserved for the signification of His Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until His Majesty's pleasure thereon

[1] 6 & 7 Vict. c. 22, s. 1. [2] Ibid.

[3] 53 & 54 Vict. c. 27. By s. 16 and the First Schedule this Act is not to come into force in New South Wales, Victoria, St. Helena, and British Honduras, until H.M. so directs by Order in Council, and until the day named in that behalf in such Order. [4] 53 & 54 Vict. c. 27, s. 3.

has been publicly signified in the possession in which it has been passed.[1]

The legislature of any British possession may authorise any court or tribunal to make inquiries as to shipwrecks or other casualties affecting ships, or as to charges of incompetency or misconduct on the part of masters, mates, or engineers of ships.[2]

By the Merchant Shipping Act, 1894, where the legislature of any British possession provides for the examination of, and grant of certificates of competency to, persons intending to act as masters, mates, or engineers on board British ships, and the Board of Trade report to Her Majesty that they are satisfied that the examinations are so conducted as to be equally efficient as the examinations for the same purpose in the United Kingdom under the Act, and that the certificates are granted under such principles as show the like qualifications and competency as those granted under the Act, and are liable to be forfeited for the like reasons and in the like manner, His Majesty may by Order in Council

(i) declare that the said certificates shall be of the same force as if they had been granted under the said Acts;

(ii) declare that any or all of the provisions of the said Acts which relate to certificates of competency granted under those Acts shall apply to the certificates referred to in the said Order;

(iii) impose such conditions and make such regulations with respect to the certificates, and to the use, issue, delivery, cancellation, and suspension thereof, as His Majesty may think fit, and impose fines not exceeding fifty pounds for the breach of such conditions and regulations.[3]

1 53 & 54 Vict. c. 27, s. 4.
2 See *post*, p. 145.
3 57 & 58 Vict. c. 60, s. 102.

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Orders in Council have been made under this provision and gazetted with regard to

Victoria,
New South Wales,
South Australia,
Tasmania,
Queensland,
New Zealand,
Dominion of Canada,
Newfoundland,
Malta,
Hong Kong, and
The Straits Settlements.[1]

By the Merchant Shipping Act, 1894, where the legislature of any British possession by any enactment provides for fixing, marking, and certifying load-lines on ships there registered on the same principles as in Part V. of the Act, and of equal effect for ascertaining and determining the maximum load-lines to which such ships can be safely loaded in salt water, and for giving notice of the load-line to the persons interested, His Majesty may by Order in Council declare that any load-line so fixed and marked, and any certificate so given, shall have the same effect as if fixed, marked, or given in pursuance of Part V. of the Act.[2] His Majesty may revoke any Order in Council he may have made under the Act.[3]

The legislature of any colony may provide by law for reducing any fine directed by the Army Act, 1881, to be recovered on summary conviction to such amount as may appear to the legislature to be better adapted to the pecuniary means of the inhabitants, and may declare the amount of the local currency which is to be deemed for the purposes of the Act to be equivalent to any sum of British currency mentioned in the Act.[4]

Colonial legislatures may enact that where any person, feloniously injured within the colony, shall

1 *London Gazette*, August 23, 1889, p. 4589.
2 57 & 58 Vict. c. 60, s. 444.
3 Ibid. s. 738.
4 43 & 45 Vict. c. 58, s. 169.

die beyond the limits of the colony, the offence may be dealt with in the colony where the injury was inflicted.[1]

If by any law or ordinance, made before or after the passing of the Extradition Act by the legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, His Majesty may by the Order in Council applying the Act in the case of any foreign state, or by any subsequent Order, either

(*a*) suspend the operation within any such British possession of the Act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there and no longer; or

(*b*) direct that such law or ordinance, or any part thereof, shall have effect in such British possession with or without modifications and alterations, as if it were a part of the Act.[2]

Orders in Council have been made under this provision incorporating the following colonial Acts and Ordinances with the Act, viz.:

Bahamas, Act, 1877.
Barbados, Act, 1878.
Bermuda, Act, 1877.
Cape of Good Hope, Act, 1877.
Ceylon, Ordinance, 1877.
Gibraltar, Ordinance, 1877.
Gold Coast, Ordinance, 1877.
Grenada, Ordinance, 1880.
West Griqualand, Ordinance, 1879.
British Honduras, Ordinance, 1877.
Hong Kong, Ordinance, 1875.
Jamaica, Act, 1877.
Leeward Islands, Act, 1877.
Malta, 1877.
Mauritius, Act, 1877.
Natal, Law, 1877.
Queensland, Act, 1877.
S. Lucia, Ordinance, 1877.
S. Vincent, Ordinance, 1880.
Sierra Leone, Ordinance, 1878.
South Australia, Act, 1877.
Straits Settlements, Ordinance, 1877.
Tasmania, Act, 1877.
Tobago, Ordinance, 1880.
Transvaal, Law, 1880.
Trinidad, Ordinance, 1877.
Victoria, Act, 1877.
Western Australia, Act, 1877.

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1 23 & 24 Vict. c. 122.
2 33 & 34 Vict. c. 52 (Extradition Act), s. 18.

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Privileges and powers of colonial Assemblies.

An Order in Council as to Extradition between British and French Guiana was published in 1886.[1] The Straits Settlements and Protected States Consolidated Extradition Order, amending Orders of June 26, 1879, Dec. 3, 1883, Nov. 29, 1884, was published 1889,[2] amended by Order in Council Dec. 12, 1894.[3] A Cyprus Extradition Order in Council was made 1895.[4]

The operation of the Extradition Acts, 1870–95, was suspended within the Dominion of Canada by Order in Council, February 22, 1896.[5]

The Colonial Prisoners Removal Acts, 1869[6] and 1884,[7] create a system of inter-colonial transportation. Under the former any two colonies may agree for the removal of prisoners from one to the other for the purpose of their undergoing the whole or any part of their punishment, and for their return. The sanction of an Order of His Majesty in Council must be obtained to the agreement either on an address of the legislative body of the colony, or, where there is no legislative body, of the Governor.[8] By the Act of 1884[7] any of His Majesty's principal Secretaries of State, acting with the concurrence of the government of every British possession concerned, may order a prisoner in any British possession to be removed to any other British possession or to the United Kingdom to undergo his sentence or the residue thereof, where it appears to him

(*a*) that the prisoner's life may be endangered or his health permanently injured by further imprisonment in the first-mentioned British possession; or

(*b*) that the prisoner belonged at the time of committing the offence to the Royal Navy or His Majesty's regular military forces; or

(*c*) that the offence was committed wholly or

1 See *London Gazette*, 1886, p. 4724.
2 See *London Gazette*, August 27, 1889, p. 4673.
3 *London Gazette*, May 11, 1894, p. 2763.
4 *London Gazette*, March 12, 1895, p. 1456.
5 *London Gazette*, Feb. 25, 1896, p. 1117.
6 32 Vict. c. 10.
7 47 & 48 Vict. c. 31.
8 32 Vict. c. 10, s. 4.

partly beyond the limits of the first-mentioned British possession; or

(*d*) that, by reason of there being no prison in the first-mentioned British possession in which the prisoner can properly undergo his sentence or otherwise, the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect; or

(*e*) that the prisoner belongs to a class of persons who under the law of the British possession are subject to removal under the Act.[1]

The legislature of any British possession may pass any law

(*a*) for determining the authority by whom and the manner in which any jurisdiction, power, or concurrence under the Acts is to be exercised or given; or

(*b*) for the payment of any costs incurred in the removal, maintenance, return, or sending back after discharge of a prisoner or criminal lunatic; or

(*c*) for dealing in such possession with prisoners or criminal lunatics removed thereto in pursuance of the Act; or

(*d*) for making any class of prisoners subject to removal under the Act; or

(*e*) otherwise in any manner for the carrying of the Act or any part thereof into effect as regards the said possession.

Thereupon His Majesty in Council may direct that such law or any part thereof shall, with or without modification or alteration, be recognised and given effect to throughout His Majesty's dominions and on the high seas as if it were part of the Act.[2]

Where there are local legislatures, as well as a

[1] 47 & 48 Vict. c. 31, ss. 2, 5, 18.
[2] 47 & 48 Vict. c. 31, s. 12.

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central legislature, the legislature above referred to means the central legislature only.[1]

An Order in Council dated December 13, 1889, has been issued making regulations as to the removal and return of prisoners and criminal lunatics under this Act. An Order dated October 17, 1884, applies the Act to Cyprus, and invests the High Commissioner or acting High Commissioner with all the powers vested by the Act in the Governor of a British possession. Another Order in Council dated February 2, 1895, applies the Act to Egypt and the Ottoman Dominions.

Acts of colonial legislatures where the English law prevails must be governed by the same rules of construction as prevail in England; and English authorities upon Acts in *pari materia* are authorities for the interpretation of colonial Acts.[2]

Where a colonial and an English enactment are identical, the colonial enactment should be read in the sense affixed to the English Act by the English tribunals.[3]

A retrospective operation ought not to be given to a statute unless the intention of the legislature that it should be so construed is expressed in plain and unambiguous language; because it manifestly shocks one's sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment. The ratio is equally apparent when a new enactment is said to convert an act wrongfully done at the time into a legal act, and to deprive the person injured of the remedy which the law then gave him.[4]

It is a sound canon of construction that an intention to take away property without compensation should

1 47 & 48 Vict. c. 31, s. 18.

2 *Per* Dr. Lushington in *Catterall* v. *Sweetman*, 1 Robert. p. 318.

3 *Harding* v. *Commissioners of Stamps for Queensland*, L. R. (1898) A. C. 769; 67 L. J. P. C. 144. Cp. *Trimble* v. *Hill*, L. R. 5 App. 342; 49 L. J. P. C. 49. *Hunt* v. *Fripp*, L. R. (1898) 1 Ch. 675.

4 *Young* v. *Adams*, L. R. (1898) A. C. 469; 67 L. J. P. C. 75.

not be imputed to a legislature unless it is expressed in unequivocal terms.[1]

For an instance of the combined effect of Imperial and Colonial Legislation see *Reg.* v. *Mount*.[2] In consequence of this case was passed the Act regulating sentences imposed by colonial courts where jurisdiction to try is conferred by Imperial Acts.[3]

Addendum to Section 2.

Natal.

In 1893 the legislature of this colony, previously administered under the Royal Charter of 1856 by a Governor assisted by an Executive and a Legislative Council, passed a Constitution Act, which received the Royal assent the same year. By it the Legislature consists of the Governor, a Legislative Council of 13 members summoned by the Governor for 10 years (5 of the number first summoned having vacated their seats at the end of 5 years), and a Legislative Assembly of 43 elective members lasting for 4 years unless earlier dissolved by the Governor.

[1] *Commissioner of Public Works* v. *Logan*, L. R. (1903) A. C. 355; 72 L. J. P. C. 91.
[2] L. R. 6 P. C. 283; 44 L. J. P.C. 58.
[3] 37 & 38 Vict. c. 27; see *post*, p. 144.

CHAPTER IV.

THE JUDICIARY AND THE BAR.

CHAP. IV. Judiciary and Bar.

COLONIAL Courts have jurisdiction to deal with charges of treason, piracy, felony, robbery, murder, conspiracy, or any other offence, committed on the sea or in any place within Admiralty jurisdiction, whether the accused is within the colony or is brought for trial to the colony, in the same way as provided by the laws of the respective colonies in the case of such offences committed, and persons charged with committing them, on waters within the limits of the respective colonies and of the local jurisdictions of the criminal courts thereof.[1] But only such penalties can be awarded as if the offence had been committed within the limits of the particular colony and the local jurisdiction, or as most nearly corresponds to the penalty due in England for such offence.[2] And if any person die in any colony of injuries feloniously caused upon the sea, or as above, every offence in respect of any such case, whether murder, manslaughter, or being accessory to murder or manslaughter, may be dealt with and punished within the colony as if it had been wholly committed within the colony; and if any person within any colony be charged with any such offence respecting the death on the sea, or as above, of any person feloniously injured, such offence is to be held to have been wholly committed upon the sea.[3]

The Vice-Admiralty Courts in the colonies exercise

1 12 & 13 Vict. c. 96, s. 1.

2 37 & 38 Vict. c. 27, s. 3. This Act was passed in consequence of *Reg.* v. *Mount*, L. R. 6 P. C. 283; 44 L. J. P. C. 58.

3 12 & 13 Vict. c. 96, s. 3.

the same jurisdiction as the High Court of Admiralty, with one exception; that is, when particular powers are conferred upon the High Court by name, and not upon the Vice-Admiralty Courts.[1]

Vice-Admiralty Courts are not Courts of record.[2]

His Majesty by commission under the Great Seal may empower the Admiralty to establish in a British possession any Vice-Admiralty Court or Courts,[3] but only with jurisdiction with respect to prize, His Majesty's navy, the slave trade, the Foreign Enlistment Act, the Pacific Islanders Protection Acts, 1872 and 1875, or to questions relating to treaties or conventions with foreign countries or to international law.[4] Any such Court may be abolished by the Admiralty on the direction of His Majesty by commission under the Great Seal; and thereupon the jurisdiction of any colonial Court of Admiralty in such possession which was previously suspended shall be revived.[5]

A commission and warrant from His Majesty may authorise either a Vice-Admiralty Court or a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890,[6] to act as a Prize Court, and may establish Vice-Admiralty Courts for that purpose.[7]

Any court or tribunal in a British possession may be authorised by the legislature thereof to make inquiries as to shipwrecks or other casualties affecting ships, or as to charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, in the following cases; viz.:

(*a*) when a shipwreck or casualty occurs to a

[1] *The Rajah of Cochin*, Swa. p. 475. *Cf. Lapraik* v. *Burrows*, 13 Moo. P. C. C. 132.

[2] *Smith* v. *Nicolls*, 7 Sc. 147; 5 B. N. C. 208; *per* Tindal, C.J. As to differences in their practice and jurisdiction, *vide The Elizabeth*, 1 Hagg. 226; and as to the form of their proceedings, *vide The Norma*, 34 L. T., N. S., 418; *The Inca*, Swa. 370.

[3] 53 & 54 Vict. c. 27 (Colonial Courts of Admiralty Act, 1890), s. 9 (1).

[4] S. 9 (2*a*). [5] S. 9 (4). [6] 53 & 54 Vict. c. 27.

[7] 57 & 58 Vict. c. 39, s. 2, sub-s. 3. As to fees, *vid.* s. 3, sub-s. 4.

British ship on or near the coasts of the British possession, or to a British ship in the course of a voyage to a port within the British possession;

(*b*) when a shipwreck or casualty occurs in any part of the world to a British ship registered in the British possession;

(*c*) when some of the crew of the British ship which has been wrecked, or to which a casualty has occurred, and who are competent witnesses to the facts, are found in the British possession;

(*d*) when the incompetency or misconduct has occurred on board a British ship registered in the British possession;

(*e*) when the master, mate, or engineer of a British ship, who is charged with incompetency or misconduct on board that British ship, is found in the British possession.

A court or tribunal so authorised shall have the same jurisdiction over the matter in question as if it had occurred within their ordinary jurisdiction, but subject to all provisions, restrictions, and conditions which would have been applicable if it had so occurred.

An inquiry shall not be held into any matter which has once been the subject of an investigation or inquiry and has been reported on by a competent court or tribunal in any part of His Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been cancelled or suspended by a naval court.

When an investigation or inquiry has been commenced in the United Kingdom with reference to any matter, an inquiry with reference to the same matter shall not be held under this section in a British possession.

The court or tribunal holding an inquiry shall have

the same powers of cancelling and suspending certificates, and shall exercise those powers in the same manner, as a court holding a similar investigation or inquiry in the United Kingdom.

The Board of Trade may order the rehearing of any inquiry under this section; if no rehearing is ordered, an appeal shall lie from any order or finding of the court or tribunal holding the inquiry to the High Court in England. But no appeal shall lie

(*a*) from any order or finding on an inquiry into a casualty affecting a ship registered in a British possession; or

(*b*) from a decision affecting the certificate of a master, mate, or engineer if that certificate has not been granted either in the United Kingdom or in a British possession under the authority of the Merchant Shipping Act, 1894.[1]

Any Court within His Majesty's dominions may, if in its opinion it is necessary or expedient, for the proper disposal of any action depending before it, to ascertain the law applicable to the facts of the case as administered in any other part of His Majesty's dominions on any point on which that law is different, direct a case to be prepared setting forth the facts as duly ascertained or agreed upon by the parties, and settle the questions of law arising out of the same on which the opinion of another Court is desired, and remit the same to the Court (being a Superior Court) whose opinion is desired, and desire them to pronounce their opinion on the questions submitted to them. Any of the parties to the action may present a petition to the Court whose opinion is to be obtained, praying it to hear parties or their counsel and to pronounce their opinion, or to pronounce their opinion without hearing parties or counsel. Thereupon the Court may appoint an early day for the hearing, and thereafter

[1] 57 & 58 Vict. c. 60, s. 478.

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pronounce their opinion, for which they may take such further procedure as shall seem proper to them.[1] A copy of the opinion certified by an officer of the Court is to be given to each of the parties to the action,[2] who may lodge it in the Court where the action is depending, and move that Court to apply the opinion; and that Court shall thereupon apply the opinion, or order it to be submitted to a jury with the other facts of the case as evidence, or conclusive evidence, of the foreign law therein stated.[3] If any appeal is brought in the action to His Majesty in Council or to the House of Lords, the opinion pronounced by any Court, whose judgments are reviewable by His Majesty in Council or the House of Lords, may be reviewed and adopted or rejected by them.[4]

If, in any action in any Superior Court in His Majesty's dominions, the Court shall deem it advisable to ascertain the law applicable thereto of any foreign state or country with the government of which His Majesty has entered into a convention for mutually ascertaining each other's law when pleaded in each other's Courts, the Court may direct a case to be prepared setting forth the facts, and may settle the questions of law arising thereout on which they desire to have the opinion of another Court, and remit them with the case to the foreign Court for their opinion, a copy whereof certified by an officer of such Court shall be deemed a correct record thereof.[5] If, in any action in any foreign Court whose government has entered into such a convention as above, the Court deems it expedient to ascertain the law applicable of any part of His Majesty's dominions, and remits to the Court whose opinion is desired a case setting forth the facts and the questions of law on which the opinion is

[1] 22 & 23 Vict. c. 63, s. 1. "Action" is declared in s. 5 of the Act to include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical. [2] Ibid. s. 2. [3] Ibid. s. 3.
[4] Ibid. s. 4. See *Lord* v. *Colvin*, 1 Drew. & Sm. 24; 29 L. J. Ch. 297.
[5] 24 & 25 Vict. c. 11, s. 1.

desired, any of the parties to the action may present a petition to the last-mentioned Court to pronounce their opinion either with or without hearing parties or counsel; and the Court shall pronounce its opinion accordingly, and a certified copy thereof shall be given to each of the parties.[1]

No convention within the scope of this Act has yet been made.

If in any proceeding, civil or criminal, in a Court in the King's dominions or held under the authority of His Majesty, any question arises as to the existence or extent of any jurisdiction of His Majesty in a foreign country, a Secretary of State shall, on the application of the Court, send to the Court within a reasonable time his decision on the question, and his decision shall for the purposes of the proceeding be final. The Court is to send to the Secretary of State, in a document under the seal of the Court or signed by a judge thereof, questions framed so as properly to raise the question; and sufficient answers to those questions shall be returned by the Secretary of State to the Court, and those answers shall, on production thereof, be conclusive evidence of the matters therein contained.[2] Under the corresponding section of the repealed Act of 1843 a question was put in *Hervey* v. *Fitzpatrick*[3] to the Secretary of State for the Colonies in the following terms: "Whether Her Majesty has at any time exercised any jurisdiction with respect to the administration of personal estates of persons dying intestate in Cape Coast Town; and if so, to what extent and in what manner and through what court or officer such jurisdiction has been exercised."

Any Superior Court at Westminster or Dublin, the Court of Session in Scotland, and any Supreme Court in any of His Majesty's colonies or possessions abroad,

1 24 & 25 Vict. c. 11, s. 3.
2 53 & 54 Vict. c. 37 (Foreign Jurisdiction Act, 1890), s. 4.
3 Kay, 421; 23 L. J. Ch. 564.

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and any judge of any such Court, and every judge in any such colony or possession who may be appointed for the purpose by His Majesty in Council, may, where any competent tribunal in His Majesty's dominions has issued a commission or other process for the examination in relation to any action or proceeding pending before it of any witnesses out of its jurisdiction, order the examination of such witnesses, if within the jurisdiction, before the person or persons appointed and in manner directed by the commission or other process; and may command the attendance of persons to be examined or the production of documents, and give all reasonable and just directions in such matters.[1] Such Court or judge may, in the case of civil proceedings, nominate a fit person to take the examination; and any deposition or examination taken before an examiner so nominated is admissible in evidence to the same extent as if taken by or before such Court or judge.[2] In the case of a *mandamus* or order in any criminal proceeding for the examination of any person being addressed to any such Court or judge, such Court or judge may nominate any judge of the Court or of an inferior court, or any magistrate within the jurisdiction of such first-mentioned Court, to take the examination; and any deposition or examination so taken shall be admissible in evidence to the same extent as if it had been taken by or before the Court or judge to whom the *mandamus* or order was addressed.[3]

Any Supreme Court in any of His Majesty's colonies or possessions abroad, and any judge of any such Court, and every judge in any such colony or possession who may be appointed for the purpose by His Majesty in Council may order the examination on oath of any witnesses within the jurisdiction, whose testimony any competent foreign tribunal, before which any civil or

[1] 22 Vict. c. 20, ss. 1, 5. *Campbell* v. *Attorney-General*, L. R. 2 Ch. App. 571; *Bullivant* v. *A.-G. for Victoria*, L. R. (1901) A. C. 196; 70 L. J. K. B. 645.

[2] 48 & 49 Vict. c. 74, s. 2.

[3] Ibid. s. 3.

commercial matter is pending, is desirous of obtaining in relation to such matter; and may command their attendance for examination or the production of any document, and give all just and reasonable directions.[1] A certificate of the diplomatic agent, or of the consular agent at London, of any foreign power that any matter is a civil or commercial matter pending before a competent tribunal in the country he represents, and that such tribunal desires to obtain the testimony of the witnesses to whom the application relates, shall be evidence, but not the only evidence admissible, of those facts.[2] The testimony of any witness may be obtained in relation to any criminal matter pending in any court or tribunal in a foreign state in the same way;[3] but not in the case of any criminal matter of a political character.[4] A foreign state includes its colonies, dependencies, and constituent parts.[5]

When the Extradition Act, 1870,[6] is applied by Order in Council to any British possession, a judge of any Court, exercising in the British possession the like powers as the Court of King's Bench exercises in England, may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.[7]

The Judicial Committee of the Privy Council have refused to issue an order in the nature of a *mandamus* to the judges of a colonial Court to enter up judgment after verdict obtained by the plaintiff in an action of assault, though such judgment ought to have been entered up as of course. They merely recommended the petitioner to apply again to the judges with an intimation of their Lordships' opinion.[8]

Where the Judge of a Vice-Admiralty Court decreed

1 19 & 20 Vict. c. 113, ss. 1, 6. 2 Ibid. s. 2.
3 33 & 34 Vict. c. 52, s. 24. 4 Ibid. 5 Ibid. s. 25.
6 33 & 34 Vict. c. 52. 7 33 & 34 Vict. c. 52, s. 17, sub-s. 4.
8 *In re Muir*, 3 Moo. P. C. C. 150; cp. *In re Assignees of Manning*, 3 Moo. P. C. C. 154.

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the sale of a ship after being served with an inhibition from the Judicial Committee, their Lordships refused to attach him, because it was not proved to their satisfaction not only that there was error, but wilful error, and that it proceeded from corrupt or improper motive.[1]

On a petition from Grenada it was decided by the Privy Council that the Chief Justice of that island had no power, alone and without the consent of the Assistant Justices, to issue rules prohibiting the Assistant Justices from doing any act in chambers except in the case of absence from the island, illness, or personal interest in the act, of the Chief Justice.[2]

The Governor of a colony having constitutional government has no power to add without limit to the number of judges of the Supreme Court without express parliamentary sanction.[3]

Certain persons having exercised the office of judges of the Royal Court of S. Lucia under commissions issued irregularly by the Governor, they were held liable in an action for trespass and false imprisonment for acts done by them in their assumed judicial capacity.[4]

In *Reg.* v. *Marais; in re Marais*,[5] it was decided that an acting judge of the Supreme Court of Natal was a judge thereof within the Natal Special Court Act, No. 14 of 1900.

No action lies against a judge of the Supreme Court of a Colony in respect of any act done by him in his judicial capacity, even though he acted oppressively and maliciously, to the prejudice of the plaintiff and the perversion of justice.[6]

[1] *Barton* v. *Field*, 4 Moo. P. C. C. 273. And see *Cloete* v. *The Queen*, 8 Moo. P. C. C. 484. [2] *In re Wells*, 3 Moo. P. C. C. 216.

[3] *Buckley* v. *Edwards*, L. R. (1892) A. C. 387 ; 61 L. J. P. C. 64 *nom. A.-G. for New Zealand* v. *Edwards*.

[4] *Gahan* v. *Lafitte*, 3 Moo. P. C. C. 382. As to the liability of judges for their acts, see *Kemp* v. *Neville*, 10 C. B., N. S., 523, and notes thereto in Broom's Constitutional Law.

[5] L. R. (1902) A. C. 51 ; 71 L. J. P. C. 32.

[6] *Anderson* v. *Gorrie*, L. R. (1895) 1 Q. B. 668.

A domiciled Englishman, on being appointed Chief Justice of Ceylon, removed to that colony with his family and resided there about three years. On his death in the colony probate of his will was taken out in the District Court of Colombo in the island and in the Court of Probate in England. Payment of legacy duty on his personal estate was refused on the ground that he was at the time of his death domiciled in Ceylon. But it was held by the Court of Exchequer at Westminster that his domicile remained English, and that the duty must be paid.[1]

The pension of a retired judge of a Crown colony, granted by the Secretary of State for the Colonies and voted annually by the legislature of the colony, is, in case of the bankruptcy of the judge, "property" which vests in the trustee of the bankruptcy; but it is "income" of the bankrupt within s. 90 of the Bankruptcy Act, 1869, and is subject to the power thereby given to the Court to determine how much of it shall be set aside for the benefit of the bankrupt's creditors.[2]

Every person exercising the office of a magistrate in a colony has the authority of a Justice of the Peace in England for the purpose of the attestation of soldiers.[3]

A memorial having been presented to the Queen by one branch of a colonial Legislature complaining of the conduct in his office of a Chief Justice of the colony, and praying the Crown to adopt such measures of relief to the inhabitants of the colony as should seem expedient and justifiable, and setting forth eleven particulars of charges against the Chief Justice; the Judicial Committee, to whom the memorial and a counter one of the Chief Justice were referred, reported that in the course of fourteen years of office several

[1] *Attorney-General* v. *Rowe*, 1 H. & C. 31; 31 L. J. Ex. 314: and cp. *In re Tootal's Trusts*, L. R. 23 Ch. D. 532.

[2] *Ex parte Huggins*, L. R. 21 Ch. D. 85. *Cf. In re Ward*, L. R. (1897) 1 Q. B. 266.

[3] 44 & 45 Vict. c. 58, s. 94, sub-s. 1.

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instances of intemperate and in some cases illegal conduct had been established against the Chief Justice; but having regard to the length of time elapsed since all the acts except one were committed, and that the last of the acts (three years before), though erroneous and improper, was committed in the execution of what the Chief Justice thought his duty, they did not think, sitting judicially, they could say he ought to be removed for misconduct.[1]

It has already been mentioned[2] that under the statute 22 Geo. III. c. 75, s. 2, the Governor and Council of a colony are empowered to amove persons from judicial office in the colony for absence without reasonable cause, or neglect, or misbehaviour. The following memorandum with reference to the removal of colonial Judges was drawn up by order of the Lord President in pursuance of a request from the Earl Granville, the Secretary of State for the Colonial Department, and submitted to and confirmed by the Lords of the Council in 1870.[3]

"It is obvious that some effectual means ought to exist for the removal of colonial Judges charged with grave misconduct; and these means ought to be less cumbrous than those existing for the removal of one of Her Majesty's Judges in England. The mode of procedure ought to protect Judges against the party and personal feelings which sometimes sway colonial Legislatures, and to ensure to the accused party a full and fair hearing before an impartial and elevated tribunal.

"Hence it was considered in the case of Mr. Justice Boothby that, although the Legislature of South Australia had passed addresses to the Crown for his removal, that measure did not suffice, as it would have done in England; and that although the Legislature might act as his accuser, it rested with the advisers

1 *Representatives of the Island of Grenada* v. *Sanderson*, 6 Moo. P. C. C. 38.

2 *Ante*, p. 54.

3 6 Moo. P. C. C., N. S., Appendix ix.

of the Crown in England to dispose of the charges against him.

"All forms of suspension or removal which are in use lead by different roads to the same result, viz., a hearing before the Privy Council.

"When a positive 'amotion' has been made by a Governor under Burke's Act (22 Geo. III. c. 75), the appeal to the Queen in Council is *strictissimi juris*, being provided by the statute itself.

"When an order of suspension from office has been made, the matter has commonly been referred by the Queen to the Judicial Committee on the recommendation of the Secretary of State, though not invariably so; as in some cases the Secretary of State has himself advised the Crown to confirm or to disallow the suspension.

"The reference may be made to the Judicial Committee or to a Committee of Council generally; but if it be made to the Judicial Committee, it is desirable that the Lord President and the Secretary of State for the Colonies should sit with the Judges on the hearing. This course has been pursued with advantage in several instances."

When charges are brought by a colonial Assembly against a Judge in the shape of a petition to the Queen in Council for his removal, as in the cases of Chief Justice Boulton, from Newfoundland, Mr. Justice Sanderson, from Grenada,[1] and Chief Justice Beaumont, from British Guiana, the Privy Council exercises a species of original jurisdiction on these petitions, which shall be considered presently.

"It may be remarked, generally, that it is extremely difficult, and might be highly injurious to the public service, to lay down an inflexible rule as to the mode of procedure to be adopted in all cases of this nature. When a Judge is charged with gross personal immorality or misconduct, with corruption, or even with

[1] See *ante*, p. 153-4.

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irregularity in pecuniary transactions, on evidence sufficient to satisfy the Executive Government of the colony of his guilt, it would be extremely improper that he should continue in the exercise of judicial functions during the whole time required for a reference to England, or a protracted investigation before the Privy Council. Immediate suspension is in such cases a necessity, if much greater evils are to be avoided. But it must be borne in mind that a Governor who resorts to such a measure takes it at his own peril, and is bound to make out a complete case in justification of it. When such cases come to be investigated at home, both the Governor and the Judge are on their trial; and to have taken unwarrantable proceedings against a Judge would doubtless be regarded as a most serious offence on the part of an Executive Officer.

"On the other hand, when the charges against a Judge consist, not in any act of personal misconduct, but in a cumulative case of judicial perversity tending to lower the dignity of his office and perhaps to set the community in a flame, it is more difficult for the local Executive to act on its own responsibility. It is in cases of this description that petitions for the removal of Judges have been addressed to the Queen in Council by colonial Legislatures.

"This last mentioned mode of proceeding has been found by the Lords of the Judicial Committee to be more dilatory, more expensive, more onerous to the parties, and less satisfactory to their Lordships, than the mode by way of previous suspension or amotion. And that for the following reasons:—The Privy Council, accustomed to act as a Court of Appeal, that is, to review the evidence and decision of inferior tribunals, has by its constitution considerable difficulty in exercising an original jurisdiction, especially when the evidence has to be transmitted from the colonies. No regular system of pleadings and procedure can be

said to exist in such cases. The consequence is that, the charges being often loose, vague and multifarious, their Lordships have not found it easy to reduce them to distinct and positive issues of fact or law, such as are necessary to the maintenance of a quasi-criminal proceeding.

"As in ecclesiastical suits for the correction or removal of clerks, to which these proceedings offer some analogy, it is essential that the acts complained of should be clearly expressed, and that the accused person should have full notice of all that is to be proved against him.

"When the issues are settled comes the difficulty of the evidence. Both sides produce affidavits and other written evidence from the colony. When a batch of affidavits has been filed on one side, application is made by the other side for time to answer them. Great delay and expense ensue; and, as in the case of Mr. Beaumont, this kind of irregularity may protract the hearing of the case for two or three years, during which time the Judge, whom the colony is seeking to remove, retains his office. When the case is completed by the parties or their agents and brought in for argument, it is often loaded with a mass of irrelevant matter. Over these proceedings, regulated as they are by the advice of counsel on either side, their Lordships can exercise but little control in the preliminary stages of the case, being themselves unacquainted with the merits of it.

"The mode of amotion with the right of appeal, or of temporary suspension with a reference to England, is not open to these objections. The evil of an inefficient or discredited judicial officer is at once removed. The Governor, who feels called upon to take so decided a step, is bound to give the accused person full notice of all the charges brought against him, to call upon him for his answer, and to hear it. This, therefore, affords a solid groundwork for his subsequent proceedings.

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"Furthermore, the Governor, knowing that his decision will be reviewed in England on appeal, is bound, for his own justification, to send home the proceedings and evidence on which that decision rests in a clear and intelligible shape; and provision is made for the performance of this duty (Nos. 83, 84, 85 and 86 of the colonial Regulations).

"If the matter is then referred by Her Majesty in Council to the Judicial Committee, their Lordships are at once in a position to deal with it. The delay and expense incidental to getting up a case at a distance from the original scene in dispute vanish. The case is, or ought to be, already complete. And if it be at once submitted to the judgment of their Lordships in a complete form, there is no reason that it should not be heard and disposed of in a very short time and at a small expense. Mr. Cloete's case (8 Moo. P. C. C. 484) is a very fair sample of a proceeding judiciously conducted in this manner. That gentleman had been improperly removed from a judicial office on April 19, 1853; he was restored to it by their Lordships on February 20, 1854; and as he had undoubtedly suffered an injustice, their Lordships expressed their desire that he should be indemnified for the expense he had been unjustly put to; and he was, in fact, soon afterwards promoted to a higher judicial office.

"It is scarcely necessary to add that in colonies having legislative Assemblies those Assemblies cannot be deprived of their undoubted constitutional right to address the Crown for the removal of a Judge; and the exercise of this right is altogether independent of the course which the Governor of the colony may think fit to adopt. When the charges against a judicial officer originate with Assemblies, the form of address or petition is perhaps the most correct, though not the most convenient, form of proceeding. When the action for removal originates with the Governor, he has the

power to give effect to it in his own hands, subject to the control of the Home authorities.

"The experience of the Lords of the Council, therefore, strongly corroborates the arguments stated in a paper presented to the Colonial Office by Sir F. Roger in favour of proceedings by the Governor, subject to a review by the Secretary of State or the Privy Council in England; and they have invariably found that in cases in which proceedings have originated with the local Assemblies, the delay, uncertainty, and expense have been greatly augmented. At the same time, when the misconduct charged is purely judicial, and therefore not properly amenable to the decision of the Executive authority, acting on the advice of Law Officers or advisers of inferior rank, it would seem that the due maintenance of the independence of judges requires that judicial acts should only be brought into question before some tribunal of weight and wisdom enough to pronounce definitely upon them; and this function appertains with peculiar fitness to the Privy Council, which, as a Court of Appeal, has to review the decision of the Colonial Courts."

The Fugitive Offenders Act, 1881,[1] is an Extradition Act for the various parts of His Majesty's dominions. It is divided into four parts:

Part I. relates to return of fugitives;
Part II. relates to intercolonial backing of warrants and offences;
Part III. relates to trial of offences, &c.
Part IV. relates to warrants and escape, evidence, exercise of jurisdiction, &c. &c.

In Part I it is enacted (s. 2) that a person accused of committing any of the offences described below[2] in one part of His Majesty's dominions may be appre-

1 44 & 45 Vict. c. 69.

2 Treason, piracy, and every offence, by whatever name called, punishable where it was committed by a minimum term of twelve months' imprisonment with hard labour (s. 9).

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hended in another part, and returned to the part whence he is a fugitive, by one of two procedures:

(A) By a warrant issued in one part of His Majesty's dominions (s. 3) and endorsed

(1) in another part by a judge of a Superior Court there;

(2) in the United Kingdom by a Secretary of State or one of the Bow Street metropolitan magistrates;

(3) in a British possession by the Governor thereof:

(B) By a provisional warrant (s. 4) issued by a magistrate of any part of His Majesty's dominions which the fugitive is suspected to be in or on his way to, on such information and under such circumstances as would justify the issue of a warrant if the offence charged had been committed within his jurisdiction; such warrant to be backed and executed accordingly. The magistrate is to send a report of the issue of the warrant and of the information, if in the United Kingdom, to a Secretary of State; if in a British possession, to the Governor; either of whom may, if he thinks fit, discharge the prisoner.

A fugitive when apprehended is to be brought before a magistrate (s. 5) and dealt with as if the offence charged were committed within his jurisdiction. If the endorsed warrant is duly authenticated, and evidence produced raising a strong or probable presumption that the fugitive committed the offence named in the warrant, being one of those above described, the magistrate shall commit the fugitive to prison and send a certificate of his committal and a report of the case, if in the United Kingdom, to a Secretary of State; if in a British

possession, to the Governor. A fugitive apprehended on a provisional warrant may be remanded for not exceeding seven days at a time for the production of an endorsed warrant.

On the expiration of fifteen days after his committal, or, if a writ of *habeas corpus* or other like process is issued by a Superior Court, after the decision of the court, a Secretary of State, if the fugitive is committed in the United Kingdom, or if in a British possession, the Governor thereof, may (s. 6) by warrant return him to that part of His Majesty's dominions whence he is a fugitive, to be there dealt with in due course of law.

If a fugitive committed to prison as above in any part of His Majesty's dominions is not removed within one month, a Superior Court may (s. 7), upon proof of notice in the United Kingdom to a Secretary of State, or in a British possession to the Governor thereof, order the fugitive to be discharged.

Where a fugitive is returned to any part of His Majesty's dominions and not prosecuted within six months of his arrival for the particular offence, or is acquitted of it, then, in the United Kingdom a Secretary of State, or in a British possession the Governor thereof, may (s. 8) send him back free of cost and without delay to the place in or on his way to which he was apprehended. If, by reason of the trivial nature of the case or of the application for the return not being made in good faith, in the interests of justice or otherwise it would, considering the distance and the facilities for communication and all the circumstances, be unjust or oppressive, or too severe a punishment, to return the fugitive either at all or till after a certain period, a Superior Court may (s. 10) discharge him absolutely or on bail, or order his return after a named period, or make any other order it thinks just.

In Part II. power is given to His Majesty (s. 12)

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by Order in Council to form groups of British possessions to which, by reason of their contiguity or otherwise, it may seem expedient to His Majesty to apply the same, and to limit the application thereof as may be deemed expedient.

A warrant issued in one possession of a group may be endorsed (s. 13) by a magistrate in any other possession of the same group, and under it the person named therein may be arrested within the jurisdiction of the endorsing magistrate, and brought before him or some other magistrate in the same possession, either of whom may (s. 14) order him to be returned to the possession in which the warrant was issued. A judge, magistrate, or other authorised person in one possession of a group may (s. 15) issue a summons for the attendance of a witness either for prosecutor or defendant, which may be endorsed by a magistrate in any other possession of the group; and the witness, on service in the latter possession of the endorsed summons and payment or tender of his expenses, shall obey it on pain of the appropriate punishment in either possession. By s. 16 a magistrate in a possession of a group may, before endorsement of a warrant as above provided, issue a provisional warrant as if for an offence committed within his jurisdiction, to be backed and executed accordingly; but the person arrested is to be discharged unless the original warrant is produced and endorsed within a reasonable time. By s. 17, if a prisoner whose return is ordered is not started off within one month of the date of the order, a magistrate or Superior Court, on proof of notice to the holder of the order and the chief police officer, may order him to be discharged; such order of discharge or refusal to make such order being subject to appeal. Where a returned prisoner is either not prosecuted within six months of his arrival or is acquitted, the Governor may (s. 18) send him back free of cost to the possession in or on his way to

which he was apprehended. A magistrate or court may (s. 19)—where, by reason of the trivial nature of the case or of the application not being made in good faith, in the interests of justice or otherwise it would be unjust or oppressive, or too severe a punishment considering the distance and the facilities of communication and all the circumstances, to return the prisoner either at all or before a certain period,—discharge the prisoner absolutely or on bail, or order him not to be returned till after a named period, or make any other order that seems just; such order of discharge or refusal to make it to be subject to appeal.

Orders in Council have been made forming the following groups of colonies to which Part II. of the Act is to apply, viz.:—

Group I, comprising

New South Wales,	New Zealand,
Victoria,	Tasmania,
South Australia,	Western Australia, and
Queensland,	Fiji,

by Order dated August 23, 1883:

Group II, comprising

Jamaica,	S. Vincent,
Turks and Caicos Islands,	Grenada,
British Guiana,	St. Lucia,
Trinidad,	Tobago,
The Leeward Islands,	The Bahamas, and
Barbados,	British Honduras,

by Order dated November 29, 1884.

In this group Part II. is only to apply to the offences to which Part I. applies. No summons or other process shall be endorsed in any of the possessions of this group requiring any person to attend as a witness in any other of the said possessions on a charge for any offence other than treason, treason felony, murder, or rape, unless it is shown to the satisfaction of the judge, magistrate, or other officer endorsing such summons or process that such person can obey the summons or process without being absent from such first-mentioned possession for a period exceeding

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fourteen days. No person is to be bound to obey any summons or process endorsed in pursuance of section 15 in any of the said possessions except on payment or tender not only of a reasonable sum for his expenses, but also of a further reasonable sum or compensation for any loss, which such person or his or her family would sustain by reason of his or her absence from his or her place of residence for the purpose of obeying such summons or process; and the amount to be so paid or tendered shall be determined in case of difference by the judge, magistrate, or officer by whom the summons or process is endorsed.

Group III, comprising

Her Majesty's East Indian territories,
Ceylon, and
The Straits Settlements,

by Order dated December 12, 1885.

Group IV, comprising

The Straits Settlements,
Hong Kong,
Labuan,

by Order dated December 12, 1885.

Group V, comprising

Cape of Good Hope;
Natal;
Basutoland;
The Orauge River Colony;
The Transvaal;
The Bechuanaland Protectorate;
Southern Rhodesia;
Barotsiland, North-Western Rhodesia;
British Central Africa Protectorate;
North-Eastern Rhodesia;

by Order dated August 8, 1901.

To the five territories of South Africa lastly mentioned Part I. also of the Fugitive Offenders Act is, by the Order of August 8, 1901, applied.

In Part III. it is provided by s. 20 that offences committed on the boundary of two adjoining British possessions may be tried in either; similarly by s. 21 in the case of offences committed on a journey between

British possessions; but no one not a British subject is to be tried for an offence not shown to have been committed in a British possession. By s. 22 the offence of giving or fabricating false evidence for the purposes of the Act may be tried either in the part of His Majesty's dominions where the evidence was used, or in that part where it was given or fabricated. For the purposes of the trial and punishment of an offence under this Act, and of preliminary, incidental, and consequential proceedings, the offence is to be deemed (s. 23) to have been committed in any place where the accused can be tried for it, and may be punished according to the Colonial Courts Jurisdiction Act, 1874 (37 & 38 Vict. c. 27), *i.e.*, by the punishment due if the offence had been committed in the colony, or the punishment most nearly corresponding to that assignable if the offence had been tried in England.[1] Search warrants may (s. 24) be issued in any part of His Majesty's dominions where a warrant under this Act is endorsed or the accused can be tried. A prisoner while being removed by sea in a British vessel from one part to another of the same British possession is to be deemed (s. 25) in legal custody and as if he were being removed under a warrant endorsed under this Act.

Part IV. directs how warrants are to be endorsed (s. 26) and executed, how fugitives and prisoners and witnesses are to be conveyed (s. 27), the mode of retaking and avenging the escape of prisoners (s. 28), of taking and authenticating depositions and warrants (s. 29), and defines the authorities by whom the jurisdiction under Part I. of the Act is to be exercised in England, Scotland, Ireland, and British possessions respectively (s. 30). By s. 33 provisions are made as to the application of the Act to offences triable in several parts of His Majesty's dominions; by s. 34, as to convicts unlawfully at large; by s. 35, as to removal of accused triable in more than one part of

[1] See *ante*, p. 144.

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His Majesty's dominions to the part where the trial can most conveniently be had. Section 36 authorises His Majesty to apply the Act by Order in Council, subject to any conditions exceptions, or qualifications, to any place out of His Majesty's dominions where he has jurisdiction. By s. 38 the Act is to apply to offences committed before its commencement or (in case of Part II.) before its application.

When a person is charged with an offence cognisable by a British court, in a foreign country, His Majesty's officials there may send him for trial and punishment to a British possession for the time being appointed in that behalf by Order in Council; and the court authorised thereto in such possession may keep him in custody and in due course try him, and on conviction punish him according to the laws in force within that possession, as if the crime or offence had been committed within its own jurisdiction.[1] This is a re-enactment of the provision in the repealed Foreign Jurisdiction Act of 1843, by Orders in Council made under which, but continued in force by s. 18 of the existing Act, persons may be sent for trial from Siam to Singapore, British Burmah (or some other part of British India), or any other British possession out of the United Kingdom, the Government of which consents; from China, Japan, and Corea to Hong Kong; from Morocco to Gibraltar or some other British possession out of the United Kingdom, the Government whereof consents; from Muscat to Bombay; from Madagascar to the Mauritius or Seychelles; from the Ottoman dominions to Bombay or Malta; from Persia to Bombay, Malta, or Cyprus; from Brunei to the Straits Settlements; from the continent of Africa to Sierra Leone, Gold Coast, Lagos, Cape Colony,[2] Natal,[2] or Zululand; from the Western Pacific to Fiji or some other part of His Majesty's dominions out of the

1 53 & 54 Vict. c. 37 (Foreign Jurisdiction Act, 1890), s. 6.
2 Not without the consent of the colonial Government.

United Kingdom, the Government whereof has consented that accused persons may be sent there for trial.[1]

In *Reg.* v. *Spilsbury*[2] the accused, who was charged with committing an offence within the jurisdiction of H.M.'s Consular Court of Morocco, was ordered by the Queen's Bench Division to be tried at Gibraltar. As a result it was held by the Judicial Committee that, although no jury can be summoned in the Consular Court of Morocco, the appellant was entitled, as an incident to being tried at Gibraltar, to be tried by Gibraltar procedure, *i.e.*, by a jury.[3]

Sentences of death, penal servitude, imprisonment, or any other punishment passed by British courts in foreign countries, may be carried into effect in such places as may be directed or determined in accordance with directions given by Order in Council.[4] This also re-enacts a provision in the repealed Act of 1843, by Orders in Council made under which, and kept in force by s. 18 of the existing Act, persons convicted in Siam may be sent for imprisonment to the Straits Settlements, British Burmah (or any other part of British India), or to some other British possession the Government whereof consents; persons convicted in Zanzibar to Bombay or any other place in His Majesty's dominions out of the United Kingdom the Government of which will receive them; in China, Japan, or Corea to Hong Kong; in the Ottoman dominions to Bombay, Malta, or Gibraltar; in the Western Pacific to Fiji or some other part of His Majesty's dominions out of the United Kingdom, the Government of which has consented that offenders may be sent there; in Morocco to Gibraltar or another British possession the Government whereof consents; elsewhere on the

[1] British Consular Jurisdiction in the East, pp. 17, 18, 78, 79; Siam, Order in Council, 1903; Morocco ditto, 1889; Africa ditto, 1889; Persia and Persian coasts and islands Orders in Council, 1889; Brunei, Order in Council, 1890.

[2] L. R. (1898) 2 Q. B. 615.

[3] *Spilsbury* v. *Reg.* L. R. (1899) A. C. 392; 68 L. J. P. C. 66.

[4] 53 & 54 Vict. c. 37, s. 7.

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continent of Africa to Sierra Leone, Gold Coast, Lagos, Cape Colony,[1] Natal,[1] Zululand; in Madagascar to the Mauritius or Seychelles; in Persia to Bombay, Malta or Gibraltar, or any other British possession the Government whereof consents; in Brunei to British Burmah (or some other part of British India), the Straits Settlements or any other British possession out of the United Kingdom, the Government whereof consents.[2]

By s. 8 of the Act where, by Order in Council made in pursuance of the Act, any British court in a foreign country is authorised to order the removal or deportation of any person from that country, that removal or deportation, and any detention for the purposes thereof according to the provisions of the Order in Council, shall be as lawful as if the order of the court were to have effect wholly within that country. This re-enacts a provision of the repealed Foreign Jurisdiction Act of 1875, by Orders in Council made under which, and continued in force by s. 18 of the Act, criminal British subjects may on certain conditions be deported from Siam to Singapore or any other part of His Majesty's dominions the Government whereof consents to receive them; from Morocco to some part of His Majesty's dominions prescribed by the Secretary of State, or the Government of which consents to receive them; from Madagascar, or any part of the African continent and islands adjacent thereto, to the Mauritius or any of His Majesty's African colonies or possessions, or any other part of His Majesty's dominions directed by a Secretary of State; from Zanzibar to Bombay or any other part of His Majesty's dominions out of the United Kingdom the Government of which consents to receive them; from China, Japan, or Corea to Hong Kong; from the Ottoman dominions to Bombay, Malta, or Gibraltar; from the Western Pacific to Fiji or any other part of His Majesty's dominions out of

[1] Not without the consent of the colonial Government.

[2] British Consular Jurisdiction in the East, pp. 18, 78; and Orders in Council above cited.

the United Kingdom the Government whereof consents to receive them; from Persia to Bombay, Malta, Gibraltar, England, or any other part of His Majesty's dominions the Government whereof consents to receive them; from Brunei to any part of His Majesty's dominions prescribed by the Secretary of State, or the Government whereof consents to receive them.[1]

His Majesty the King in Council may by Order assign to or confer on any court in any British possession, or held under the authority of His Majesty, any jurisdiction, civil or criminal, original or appellate, which may lawfully by Order in Council be assigned to or conferred on any British court in any foreign country, and may make provisions and regulations respecting the exercise of such jurisdiction, and the enforcement and execution of the judgments, decrees, and sentences of any such court, and respecting appeals therefrom.[2] This section again re-enacts a provision in the repealed Foreign Jurisdiction Act of 1866, by Orders in Council under which, kept in force by s. 18 of the present Act, the Supreme Court of Hong Kong was invested with jurisdiction in any place on land in China within ten miles of any part of the colony[3]; the exercise of jurisdiction in Siam by a judge of the Supreme Court of the Straits Settlements was authorised[4]; and every judge of a Superior Court of any African possession of His Majesty may exercise within the limits of any prescribed local jurisdiction constituted by or under the Africa Order in Council, 1889, any power or authority which may be exercised by any court under that Order.[5] This enactment also appears to sanction the appeals granted by various Orders in Council from His Majesty's Consular Courts in Morocco to Gibraltar; from Muscat and Zanzibar to Bombay: from Madagascar and the African Consular

1 British Consular Jurisdiction in the East, pp. 19, 82-86; and Orders in Council above cited, p. 167, n. 1.

2 53 & 54 Vict. c. 37. s. 9. 3 Order in Council, Oct. 23, 1877.

4 Siam Order in Council, Dec. 13, 1889. 5 Art. 20 of the Order.

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Courts to the Mauritius and other prescribed courts; from Siam to the Straits Settlements; from the Western Pacific to Fiji.[1]

His Majesty in Council may confer on any court in any British possession any such jurisdiction, civil or criminal, original or appellate, in respect of matters arising in any British settlement as might be conferred by virtue of the Act on a court in the settlement, and make provisions and regulations for its exercise and respecting appeals.[2]

No writ of *habeas corpus* may issue out of England by the authority of any judge or court of justice therein into any colony where His Majesty has a lawfully established court or courts of Justice having authority to grant or issue the writ and to ensure its due execution in the colony.[3]

Where a court in a colony causes a person to be delivered into military custody, or to be committed as a deserter from His Majesty's regular forces, or remands a person charged, on his own confession, with being a deserter for the purpose of obtaining information as to the truth or falsehood of his confession, it must transmit to the general or other officer commanding the forces in the colony a descriptive return in relation to such deserter.[4] All offences prosecutable, all fines recoverable on summary conviction, and all proceedings which may be taken before a court of summary conviction, under the Army Act, may be prosecuted, recovered, and taken in any colony in such courts and in such manner as may be from time to time provided therein by law, or as the like offences,

1 British Consular Jurisdiction in the East, pp. 44, 45, 55, 56, 57; Orders in Council above cited, p. 191, n. 2.

2 50 & 51 Vict. c. 54 (British Settlements Act, 1887), s. 4. In s. 6 British settlement is defined as any British possession not acquired by cession or conquest, and not for the time being within the jurisdiction of the legislature, constituted otherwise than by virtue of the Act or of any Act repealed thereby, of any British possession.

3 25 & 26 Vict. c. 20, s. 1; passed in consequence of the decision *In the Matter of Anderson*, 30 L. J. Q. B. 129; 3 E. & E. 487.

4 44 & 45 Vict. c. 58, s. 154, sub-ss. 4, 6.

fines, and proceedings may be prosecuted, recovered, and taken, or as near thereto as circumstances admit.[1]

When actual war is raging acts done by the military authorities are not justiciable by the ordinary tribunals. And the fact, that for some purposes some tribunals have been permitted to pursue their ordinary course in a district in which martial law has been proclaimed, is not conclusive that war is not raging.[2]

By the Bankruptcy Act, 1883,[3] the High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy.[4]

A suit pending in England is no bar to a subsequent suit in the colonies (*e.g.*, Jamaica) for the same matter.[5] And in an action in England the Court refused to strike out a counterclaim asking for accounts already ordered in an action in Honduras, on the ground that the two actions were so closely connected that neither of them could be finally wound up independently of the other.[6]

A decision on appeal from a magistrate exercising a jurisdiction not possessed by him cannot support a plea of *res judicata* in a subsequent action.[7]

When a person is entitled to administer the estate of a deceased person under the grant of probate of a court of the colony where the deceased was domiciled, the Court of Probate in England will make a grant to that person of administration with the will annexed.[8]

And now, where a court of probate in a British

1 44 & 45 Vict. c. 58, s. 168.
2 *Ex parte D. F. Marais*, L. R. (1902) A. C. 109.
3 46 & 47 Vict. c. 52. 4 S. 118.
5 *Bayley* v. *Edwards*, 3 Swanst. 703.
6 *Mutrie* v. *Binney*, L. R. 35 Ch. D. 614.
7 *Attorney-General for Trinidad and Tobago* v. *Eriché*, L. R. (1893) A. C. 518; 63 L. J. P. C. 6.
8 *In The Goods of Earl*, L. R. 1 P. & D. 450.

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possession, whose legislature has made adequate provision for the recognition in that possession of probates and letters of administration granted by the Courts of the United Kingdom, has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to and a copy thereof deposited with a court of probate in the United Kingdom, be sealed with the seal of that court, and thereupon shall be of the like force and effect and have the same operation in the United Kingdom, as if granted by that court.[1]

The Act has been applied to the following colonies:—

Cape of Good Hope.	Bahamas.
New South Wales.	Barbados.
Victoria.	Lagos.
New Zealand.	Tasmania.
Gibraltar.	Fiji.
British Honduras.	Trinidad and Tobago.
Hong Kong.	Jamaica.
Western Australia.	Natal.
Ontario.	Leeward Islands.
British Guiana.	British Columbia.
Gold Coast.	Nova Scotia.
South Australia.	Queensland.
Straits Settlements.	Transvaal.

A colonial grant of administration *de bonis non*, though limited, may be resealed in the United Kingdom, provided the proper conditions prescribed by the Colonial Probates Act, 1892, have been complied with.[2]

A native of the Gold Coast filed a bill in the High Court of Chancery in England alleging that he had taken the benefit of an Insolvent Act of that colony in consequence of a judgment against him in the colonial court, from which he had unsuccessfully appealed to the Court of Appeal in the colony; that the assignee in England had assets in his hands, out of which, if the judgment were reversed, there would be a large surplus; that the judgment was erroneous, and an appeal would probably succeed; but that the

[1] 55 Vict. c. 6 (Colonial Probates Act), ss. 1, 2. Probate includes confirmation in Scotland.

[2] *In The Goods of W. Smith, the Younger*, L. R. (1904) P. 114; 73 L. J. P. D. & A. 28.

assignee, colluding with the judgment creditor, refused to appeal to the Privy Council. The plaintiff then prayed the Court to decree that the assignee should prosecute the appeal, or to enable the plaintiff to prosecute the appeal in the assignee's name. The Court, however, refused to interfere, as it did not appear that the plaintiff had failed to obtain justice in the courts of his own country, which must be assumed to have full and ample powers to do complete justice.[1] And where a question on the construction of a contract for a security by way of mortgage had been before a court of competent jurisdiction in a colony, which directed a foreclosure and judicial sale, allegations of fraud being merely general and denied, the Court of Chancery in England refused to interfere.[2]

Where an action is brought on a foreign judgment to recover penalties, it is the duty of the Court to decide for itself whether the statute on which the foreign judgment proceeded is penal within the rule of international law forbidding the execution in one state of the penal laws of another state. As to that question there is a distinction between penalties recoverable at the instance of a duly authorised official of the State whose law is alleged to have been infringed or by a common informer, and those recoverable at the instance of a private person. Recovery of the latter class is not forbidden by international law.[3]

A suit cannot be maintained in England for the recovery of land in the colonies.[4]

When the question in a case is one of fact, and there is evidence on both sides properly submitted to the jury, the verdict of the jury once found ought to stand; the setting aside of such a verdict should be of rare and exceptional occurrence.[5]

A verdict of a jury will not be disturbed as against

1 *Smith* v. *Moffatt*, L. R. 1 Eq. 397. 2 *White* v. *Hall*, 12 Ves. 321.
3 *Huntington* v. *Attrill*, L. R. (1893) A. C. 150; 62 L. J. P. C. 44.
4 *Per* Malins, V.C. in *Reiner* v. *Marquis of Salisbury*, L. R. 2 Ch. Div. 378. 5 *Commissioner for Railways* v. *Brown*, L. R. 13 App. 133.

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evidence, or the weight of evidence, unless it is one which a jury, viewing the whole of the evidence reasonably, could not properly find.[1]

In discharging the verdict of a jury the Court must be satisfied that there is such a preponderance against it as to make it unreasonable and almost perverse that the jury, when instructed and properly assisted by the judge, should have returned it.[2]

As to committals for contempt by colonial Courts, see post, p. 181 *seqq.*

The judgments of colonial Courts have frequently been brought before the English Courts, usually for the purpose of concluding one of the parties to the English proceedings on the point adjudicated on in the colony.

In England colonial judgments stand upon the same footing as foreign judgments;[3] and as to both some difference of opinion has been displayed in the English cases as to their real nature, the effect to be given to them in English Courts, and the grounds upon which they should be enforced or not in those Courts. In *Hall* v. *Odber*[4] Lord Ellenborough, C.J., said that foreign judgments were but evidence of the debt, and that *assumpsit* lay on them, and that it was open to the parties to enter into the question of their regularity; in which opinion he was supported by all the other three judges of the Court. In another case, however, the same learned judge stated that "by the comity paid by us to the judgments of other Courts abroad of competent jurisdiction, we give full and binding effect to such judgments, so far as they profess to bind the persons and property immediately before them in judgment, and to which their adjudi-

1 *Phillips* v. *Martin*, L. R. 15 App. 193.

2 *Cox* v. *English and Scottish and Australasian Bank*, L. R. (1905) A. C. 168.

3 *Bank of Australasia* v. *Harding*, 9 C. B. p. 686; 19 L. J. C. P. 345; *Same* v. *Nias*, 16 Q. B. p. 735.

4 11 East, 118.

cations properly relate."[1] This statement was quoted by the Judicial Committee of the Privy Council in the case of *Messina* v. *Petrococchino*[2] as firmly established doctrine, with the proviso, however, that foreign judgments might be impeached for manifest error, being obtained by fraud, or being wanting in the conditions of natural justice. In *Smith* v. *Nicolls*[3] Tindal, C.J., said that a colonial judgment was in the nature of evidence of a contract between the parties; while Bosanquet, J., thought it amounted to an agreement upon which an action of *assumpsit* would lie. In *Henley* v. *Soper*[4] Lord Tenterden gave it as his opinion that a promise to pay the debt ascertained by the decree of a colonial Court fixing the amount due from one of two partners to the other might and ought to be presumed;[5] while Wilde, C.J., in *Bank of Australasia* v. *Harding*,[6] said that in England the colonial judgment which was then in question was not a security of a higher nature than the prior simple contract debt; and cited with approval the opinion of Lord Brougham in *Houlditch* v. *Donegal*,[7] that in this country a foreign judgment was only *primâ facie*, not conclusive, evidence of a debt. But Blackburn, J. (subsequently Lord Blackburn), in *Godard* v. *Gray*,[8] repudiated Lord Brougham's doctrine, and declared there was certainly no case decided upon such a principle, and showed by reference to the mode of pleading that the judgment was considered as itself giving rise to a legal obligation to obey it, and to pay the sum adjudged. "If the judgment," he went on to say,[9] "was merely evidence of the original cause of action, it might be met by counter-evidence negativing the existence of such cause of action." And at one time there seems to have been an impression on

1 *Power* v. *Whitmore*, 4 M. & S. 150.
2 L. R. 4 P. C. p. 157. 3 5 B. N. C. 208. 4 8 B. & C. 16.
5 And see *Walker* v. *Witter*, 1 Doug. 1; and *Robertson* v. *Struth*, 5 Q. B. 941. 6 9 C. B. p. 686.
7 2 C. & F. 470. 8 L. R. 6 Q. B. p. 149. 9 P. 150.

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the English bench that foreign (including colonial) judgments could be examined into and impeached upon the merits.[1] It may now, however, be considered as settled that when an action is brought on a judgment of a foreign or colonial court having jurisdiction over the parties to, and the subject-matter of, the suit, it cannot be impeached as being erroneous on the merits or mistaken in the law, whether of its own country or of England.[2] The principle upon which foreign and colonial judgments alike are supported and enforced has been declared to be that the judgment of a Court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the English Courts are bound to enforce.[3] Anything, therefore, which negatives the duty cast upon the defendant to obey the foreign or colonial judgment, or forms a legal excuse for not performing it, is a defence to the action.[4] Accordingly it is open to the defendant to show that the Court had not jurisdiction over the subject-matter of the suit, or that he was never summoned to answer and had no opportunity of making his defence, or that the judgment was fraudulently obtained.[5] Perhaps it was in contemplation of these modes of impeaching a foreign judgment that it has been said to be only *primâ facie* evidence.[6] *Buchanan* v. *Rucker*[7] was an action on a judgment of the Island Court in Tobago. The defendant was described on the face of the

1 See *Walker* v. *Witter*, 1 Doug. 1, and notes.

2 *Tarleton* v. *Tarleton*, 4 M. & S. 21 ; *Becquet* v. *McCarthy*, 2 B. & Ad. 95 ; *Martin* v. *Nicolls*, 3 Sim. 458 ; *Godard* v. *Gray*, L. R. 6 Q. B. 139 ; *Bank of Australasia* v. *Harding*, 9 C. B. 661 ; *Same* v. *Nias*, 16 Q. B. 717.

3 *Williams* v. *Jones*, 14 L. J. Ex. 145 ; *Schibsby* v. *Westenholz*, L. R. 6 Q. B. p. 159 ; *Godard* v. *Gray*, L. R. 6 Q. B. p. 148 ; and *cf. Henderson* v. *Henderson*, 6 Q. B. p. 297.

4 L. R. 6 Q. B. p. 159.

5 *Buchanan* v. *Rucker*, 9 East, 192 ; *Lord Cranstown* v. *Johnson*, 3 Ves. 170 ; *Obicini* v. *Bligh*, 8 Bing. 335 ; *Abouloff* v. *Oppenheim*, L. R. 10 Q. B. D. 295 ; 52 L. J. Q. B. 1 ; *Messina* v. *Petrococchino*, L. R. 4 P. C. p. 157 ; *Vadala* v. *Lawes*, L. R. 25 Q. B. D. 310.

6 Lord Campbell, C.J., in *Bank of Australasia* v. *Nias*, 16 Q. B. p. 735

7 9 East, 192.

proceedings as formerly of Dunkirk, now of London, and was stated thereon to have been summoned by nailing up a copy of the declaration at the court-house door; whereupon judgment was given by default. This was according to the island law in cases where defendants were absent from the island. The plaintiff was nonsuited, Lord Ellenborough saying that by persons absent from the island must necessarily be understood persons who have been present and within the jurisdiction of the court; but that the phrase could not be applied to a person who, for aught that appears, never was present within or subject to the jurisdiction.[1]

A plea of *nul tiel record* to an action on a colonial judgment was held bad in *Philpott* v. *Adams*.[2]

Although the presumption would be that a foreign court in delivering judgment would be taken to know its own law, still when it clearly appeared by the admission of the parties that the law of the foreign tribunal had not been correctly declared by its judgment, the English Court held that the foreign judgment was not binding upon it.[3]

With respect, however, to colonial judgments there is a special consideration to be noticed: viz., that there is a duly constituted tribunal in England to which such judgments may be brought on appeal, and by which they may, if necessary, be corrected. Then, as Lord Campbell, C.J., put it in *Bank of Australasia* v. *Nias*,[4] either there has or has not been an appeal; in either case it seems contrary to principle and expediency for the same question to be again submitted to a jury in this country. A regular mode having been provided by which an erroneous judgment of a colonial Court may be examined and reversed, that mode

1 And see and *cf.* *Schibsby* v. *Westenholz*, L. R. 6 Q. B. 155. The principles upon which foreign judgments are enforced are laid down and expounded at length by Prof. Dicey in his work on the Conflict of Laws, Introduction; General Principles, i, ii, iii, iv.

2 31 L. J. Ex. 421.

3 *Meyer* v. *Ralli*, L. R. 1 C. P. D. 358.

4 16 Q. B. p. 736.

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ought to be pursued. In *Martin* v. *Nicolls*[1] a bill for a discovery and a commission to examine witnesses in Antigua, in aid of the plaintiff's defence to an action brought in England on a judgment obtained in Antigua, was refused on the ground that a foreign judgment was not examinable in the Courts of Westminster Hall; and that to allow the bill to stand would be to say that the judgment obtained in Antigua might be overruled by the English Court of Common Pleas. If the judgment was wrong, it was said, it might be set right by an appeal to the King in Council.[2] In *Tarleton* v. *Tarleton*[3] the plaintiff sued the defendant on a covenant to indemnify the plaintiff for all debts due from the late partnership of the plaintiff, defendant, and another. A decree of the Court of Chancery of Grenada against the late partners for payment of a debt due from the partnership was proved, and a sequestration thereon against the plaintiff's estate, whereby the plaintiff was forced to pay the debt. Lord Ellenborough said he did not sit to try a writ of error on the proceedings in the Court abroad; and the full Court refused a new trial. So also in *Henderson* v. *Henderson*[4] an injunction against the execution of a decree of equity of the Supreme Court of Newfoundland was refused by the Court of Chancery in England, an appeal to the Privy Council being the appropriate proceeding to take.

It is but a corollary to the above principle that the proceedings of a colonial Court will be presumed to have been regular, unless proof to the contrary is adduced. Thus, in an action of debt upon a judgment of the Supreme Court of S. Vincent a demurrer to the declaration on the ground that it did not show that the defendant was ever subject to the jurisdiction of the Court was overruled.[5] So, in an action in the English Court of Queen's Bench on a decree of the

1 3 Sim. 458. 2 3 Sim. pp. 464–5. 3 4 M. & S. 20.
4 3 Hare, 100. 5 *Robertson* v. *Struth*, 5 Q. B. 941.

equity side of the Supreme Court of Newfoundland awarding a sum of money to be paid to the plaintiff by the defendant the decree was enforced, it being presumed that right was done in the colonial Court, and whatever constituted a defence in the colonial Court should have been pleaded there.[1] Therefore pleas relying on a want of representative title in the plaintiff and of set-off were rejected. And in an action on a judgment of the Supreme Court of Jamaica obtained by default, Lord Ellenborough refused to allow the statement in the judgment that the defendant appeared by his attorney to be controverted, on the ground that foreign judgments must receive credit for the facts they specifically allege.[2] It has also been held that an action of debt is maintainable at law on a decree of a colonial Court of equity simply ascertaining a balance and ordering payment by the defendant to the plaintiff.[3] But owing to the changes in procedure made by the Judicature Act of 1873 and the amending Acts this point is now of no importance.

In order to maintain a suit in England for damages awarded by an Admiralty Court abroad (in Malta), the transcript of the proceedings in the Admiralty Court should show expressly, and not by mere inference, the sentence of the Admiralty Court, and that the defendant was within its jurisdiction.[4]

To bar an action in England a judgment in a colonial Court must be final and conclusive between the parties.[5]

An important difference between home and colonial judgments, so far as the remedy upon them at home is concerned, is pointed out by Tindal, C.J., in *Smith* v.

1 *Henderson* v. *Henderson*, 6 Q. B. 288 ; *vide* ibid. p. 298.
2 *Molony* v. *Gibbons*, 2 Camp. 502.
3 *Smith* v. *Moffatt*, L. R. 1 Eq. 397.
4 *Obicini* v. *Bligh*, 8 Bing. 335 (head-note).
5 *Smith* v. *Nicolls*, 5 B. N. C. 208 ; *Plummer* v. *Woodburne*, 4 B. & C. 625 ; *cf. Nouvion* v. *Freeman*, *in re Henderson*, L. R. 15 App. 1. As to what is a final judgment, see *McDonald* v. *Belcher*, L. R. (1904) A. C. 429.

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Nicolls.[1] In the case of the former the plaintiff can issue an immediate writ of execution on the judgment; but the only mode by which an execution can be taken in England on a judgment recovered in a colonial Court is by bringing a new action on the judgment.

With reference to their effect upon controversies judgments are divisible into the two classes of judgments *in rem* and judgments *inter partes*. The former are decisions upon the *status* of a particular subject by a tribunal competent to make such a decision, and are conclusive upon all persons whatever.[2] Judgments *inter partes*, though in general binding between the parties to them and their privies,[3] do not affect the right of third parties.[4] The principal examples of judgments *in rem* were formerly found in the Ecclesiastical, Admiralty, Probate and Matrimonial Courts, and in certain revenue cases formerly brought in the Court of Exchequer. The jurisdiction of these Courts has now been transferred to the High Court of Justice.[5]

Where actual war is raging acts done by the military authorities are not justiciable by the ordinary tribunals. The fact that for some purposes the tribunals have been permitted to pursue their ordinary course in the district in which martial law has been proclaimed is not conclusive that war is not raging there.[6]

1 5 B. N. C. p. 220.

2 *Castrique* v. *Imrie*, 8 C. B. N. S., 1, 405; L. R. 4 H. L. 414.

3 As to privies, *vide* notes to *Duchess of Kingston's Case*, 2 Sm. L. C.

4 *Castrique* v. *Imrie*, *ubi sup.*

5 36 & 37 Vict. c. 66, ss. 16, 34. A doubt as to the enforcement of judgments of Vice-Admiralty Courts was expressed in *Smith* v. *Nicolls*, 5 B. N. C. 208. Those Courts are not Courts of record, ibid., *per* Tindal, C.J. As to how the appointment of deputy-judge is made, *vide Rolet* v. *Reg.* L. R. 1 P. C. 198; for the form of proceedings, see *The Norma*, 34 L. T., N. S., 418, *The Inca*, Swa. 370; for security for costs, see *George* v. *Reg.*, L. R. 1 P. C. 389, 4 Moo. P. C. C., N. S., 287. As to differences in practice and jurisdiction, see *The Elizabeth*, 1 Hagg. 226. And *vide Hunter* v. *Prinsep*, 10 East, 378; *Hunter* v. *Parker*, 7 M. & W. 322; *The Segredo*, 1 Spk. E. & A. 57; *The Rajah of Cochin*, Swa. 472; *The Hercules*, 2 Dods. 353.

6 *Marais* v. *General Officer commanding Lines of Communication and A.-G. of Cape of Good Hope*, L. R. (1902) A. C. 109; 71 L. J. P. C. 42.

Annexation is an Act of State; and any obligation assumed under a treaty to that effect, either to the ceding sovereign or to individuals, is not one which municipal Courts are authorised to enforce.[1]

In the colonies there are no Inns of Court. Advocates and attorneys have always been admitted in the colonial Courts by the judges. The power of suspending from practice is incidental to that of admitting to practice. Therefore the Judicial Committee refused to advise Her Majesty to interfere with the order of the Justices of the Common Pleas in Antigua disbarring an advocate for professional and general misconduct.[2] And two orders of the Supreme Court of New Zealand, the first suspending, the second striking off the rolls, an attorney of that Court, applied for by a barrister practising in the Court, were sustained by the Judicial Committee.[3]

The Judicial Committee have held that a Court of record in the colonies is the sole judge of what constitutes contempt of court; that there is no remedy by petition to them to review the propriety of orders imposing fines for contempts; and that they have no jurisdiction to entertain petitions impugning the propriety of such orders.[4] Not a single case is to be found where there has been a committal by one of the colonial Courts for contempt, where it appeared clearly upon the face of the order that the party had committed a contempt, that he had been duly summoned, and that the punishment awarded for the contempt was an appropriate one, in which the Committee has ever entertained an appeal against an order of that description.[5] But the Committee will rescind an order of committal where, in their opinion, there has been no contempt of court, and have

1 *Cook* v. *Sprigg*, L. R. (1899) A. C. 572.
2 *In re the Justices of the Common Pleas at Antigua*, 1 Knapp, 267.
3 *Bunny* v. *Judges of New Zealand*, 15 Moo. P. C. C. 164.
4 *Rainy* v. *the Justices of Sierra Leone*, 8 Moo. P. C. C. 47.
5 *McDermott* v. *Judges of British Guiana*, L. R. 2 P. C. p. 363.

even ordered the committing judge to pay the costs of the appeal to Her Majesty in Council.[1]

Disbarring and striking off the rolls is not an appropriate punishment for contempt of court; a petition against such an order will therefore be entertained, as well as against other inappropriate punishments.[2] Thus a practitioner in the Supreme Court, Halifax, Nova Scotia, having written a letter in his private capacity as suitor to the Chief Justice complaining of a supposed grievance suffered by him as suitor, and reflecting on the judges and the administration of justice generally in the Court, was by order of the Court suspended from practising in the Court. On appeal the Judicial Committee discharged the order as substituting a penalty and mode of punishment not appropriate to the offence. The letter, though a contempt of court and punishable by fine and imprisonment, having been written by a practitioner in his individual and private capacity as a suitor, in respect of a supposed grievance as a suitor, of an injury done to him as such suitor, and having no connection whatever with his professional character or anything done by him professionally either as an attorney or barrister, it was not competent for the Supreme Court to go further than award to the offence the customary punishment for contempt of court, or to inflict a professional punishment of indefinite suspension for an act not done professionally, and which *per se*, did not render the party committing it unfit to remain a practitioner in court.[3]

Where, on an information against a barrister and solicitor in reference to his conduct in drawing a deed

1 *McLeod* v. *St. Aubyn*, L. R. (1899) A. C. 549.

2 *Smith* v. *Justices of Sierra Leone*, 3 Moo. P. C. C. 361; *In re Downie and Arrindell*, 3 Moo. P. C. C. 414, as explained in *McDermott* v. *Judges of British Guiana*, L. R. 2 P. C. 341. As to the powers of the Royal Court of Jersey to commit without warrant for contempt of court, see *In re Wilson*, 9 Q. B. 984; 14 L. J. Q. B. 201; and of the Chancery Court of the Isle of Man, see *In re Crawford*, 13 Q. B. 613; 18 L. J. Q. B. 225.

3 *In re Wallace*, L. R. 1 P. C. 283.

of mortgage for a client in which the consideration money was untruly stated and the deed itself was antedated, he was acquitted of any fraudulent intent, but had put the deed in evidence knowing it was falsely dated, the Judicial Committee reversed the order of the Supreme Court of the Gold Coast striking him off the rolls, the finding against fraud covering the matter of the date, which in fact was immaterial.[1]

When an order suspending from practice or striking off the rolls is made upon grounds unsupported by evidence,[2] or without notice to the person concerned, or upon insufficient grounds,[3] or without giving time to prepare defence,[4] the Judicial Committee on appeal will rescind it.

And in a case on appeal from Hong Kong[5] a barrister of the Supreme Court of that colony had been fined by the Chief Justice by order of Court, and adjudged to have been guilty of several contempts of court in disrespectfully addressing the Chief Justice while conducting a cause before him. The order was made without notice of the alleged contempt or rule to show cause, and without the appellant being heard in defence. The Judicial Committee reported to Her Majesty that in their judgment no person should be punished for contempt of court, which was a criminal offence, unless the specific offence charged against him was distinctly stated, and an opportunity of answering it given him; and that in that case they were not satisfied that was done before sentence passed; that they were not satisfied that each of the six offences, for which the sentence was received, amounted to a contempt of court or was legally an offence; and they recommended that the fine should be remitted.

1 *Ex parte Renner*, L. R. (1897) A. C. 218; 66 L. J. P. C. 49.
2 *In re Monckton*, 1 Moo. P. C. C. 455.
3 *Smith* v. *Justices of Sierra Leone*, 7 Moo. P. C. C. 174; *Ex parte Renner*, L. R. (1897) A. C. 218.
4 *Emerson* v. *Judges of Supreme Court of Newfoundland*, 8 Moo. P. C. C. 157.
5 *In re Pollard*, L. R. 2 P. C. 106.

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The nature of the offence of contempt of court was discussed before the Privy Council in the matter of a *Special Reference from the Bahama Islands*,[1] where the Judicial Committee recorded it as their opinion that to constitute contempt of court an act must be calculated to obstruct or interfere with the course of justice or the due administration of the law. In *McLeod* v. *St. Aubyn*[2] the Judicial Committee laid it down that the power summarily to commit for contempt of court is not to be used for the vindication of the judge as a person. He must resort to an action for libel or a criminal information. Committal for contempt of court is a weapon to be used sparingly, and always with reference to the interests of the administration of justice. Hence, when a trial has taken place and the case is over, judge and jury are given over to criticism. It is a summary process, and should be used only from a sense of duty, and under the pressure of public necessity, for there can be no landmarks pointing out the boundaries in all cases. Committals for contempt of court by scandalising the Court itself have become obsolete in England. The Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of coloured population, the enforcement in proper cases of committal for contempt of court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and the respect for the Court.

A Judge of the Queen's Bench in Lower Canada, sitting alone in exercise of criminal jurisdiction, has no power under s. 72 of c. 77 of the Consolidated Statutes of Canada to pronounce a counsel in contempt for publishing two letters reflecting upon his conduct, or to impose a fine.[3] Where a fine is imposed, the remedy

[1] L. R. (1893) A. C. 138 ; 62 L. J. P. C. 79 *nom. In re Moseley.*
[2] L. R. (1899) A. C. p. 561. [3] *In re Ramsay*, L. R. 3 P. C. 427.

is to petition the Crown for a reference to the Judicial Committee under 3 & 4 Will. 4, c. 41, s. 4.[1]

The Judicial Committee has no jurisdiction to direct the release of a party imprisoned for a contempt of the Court below pending an appeal respecting the results of the suit.[2]

In the year 1884 a question of some importance to His Majesty's counsel who practice before the Privy Council was submitted to the Attorney-General at the request of the judges. In consequence of the present facilities for rapid travelling it had become a matter of frequent occurrence for "silks" of the colonial Bar to come over to England and conduct in the Privy Council appeals from the various colonial Courts. On many occasions the Attorneys-General of various provinces had crossed for this purpose; and the question had often arisen whether by virtue of their office they could take precedence of Queen's Counsel of the English Bar. The Attorney-General (Sir Henry James, Q.C., M.P.) decided that as there was no precedent in existence, colonial Queen's Counsel should be bound by the same rule that prevailed at the English Bar, the Queen's Counsel of which had priority only according to the dates of their patents as Queen's Counsel.

In *Attorney-General of Dominion of Canada* v. *Attorney-General for Province of Ontario*[3] the Judicial Committee decided that a law of Ontario empowering the Lieutenant-Governor of the Province to appoint Queen's Counsel and issue patents of precedence to members of the provincial Bar was *intra vires* of the provincial legislature.

In the case of Sir Bryan O'Loghlen, who was M.P. for Clare County, 1877–9, his seat was held in the latter year to be vacant, in accordance with a report of a Select Committee of the House of Commons, owing to his acceptance of the position of Attorney-

1 *In re Ramsay*, L.R. 3 P. C. 427.
2 *Hughes* v. *Porral*, 4 Moo. P. C. C. 41.
3 L. R. (1898) A. C. 247; 67 L. J. P. C. 17.

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General of Victoria, which, though in the gift of the Governor of the Colony, was held to fall within the category of a place of profit under the Crown within the meaning of the Place Acts.[1]

Under ss. 2 and 3 of the Rules of March 31, 1870, only solicitors or others practising in London, or solicitors admitted by the High Courts in India or the corresponding Courts in the colonies, can be admitted to practice in the Privy Council. The Judicial Committee have no power to extend at their discretion the class of those eligible.[2]

By the Colonial Solicitors' Act, 1900,[3] a solicitor in a Superior Court of a British possession to which the Act applies, who has been in practice before such Court for not less than three years, may on giving due notice and the prescribed proof of his qualifications and good character, and either on passing the prescribed examination, or in the prescribed cases without examination, and either after service of articles of clerkship during the prescribed period, or in the prescribed cases without such service, be admitted a solicitor of the Supreme Court on payment of the prescribed amount in respect of stamp duties and fees.[4] Where as respects a Superior Court in a British possession His Majesty is satisfied on the report of a Secretary of State

(*a*) that the regulations respecting the admission of persons to be solicitors of that Superior Court are such as to secure that those solicitors possess proper qualifications and competency; and

(*b*) that by the law of the British possession the solicitors of the Supreme Court will be admitted to be solicitors in the Superior Court of the possession on terms as favourable as those on which it is proposed to

1 Law Times, Feb. 11. 1905, p. 34. And *cf. Williams* v. *Howarth*, L. R. (1905) A. C. 551; 74 L. J. P. C. 115; see *ante*, p. 57.

2 *In re Twidale's Petition*, L. R. 14 App. 328.

3 63 & 64 Vict. c. 14. 4 S. 1.

admit solicitors of that Superior Court in pursuance of this Act to be solicitors of the Supreme Court;

His Majesty in Council may order that the Act shall apply to the said Superior Court and British possession, subject to any exceptions, conditions and modifications specified in the order.[1] By the same or any subsequent order His Majesty may as respects the Court of the British possession named in the order provide for all matters authorised by the Act to be prescribed, and for all matters appearing to His Majesty to be necessary or proper for giving effect to the order and to the Act.[2] A part of a British possession under a local legislature may be treated as a British possession for the purposes of the Act.[3] Solicitors of a British possession may be admitted to be solicitors in any part of the United Kingdom, or in two parts or in one only,[4] the provisions of the Act being modified to suit the cases of Scotland and Ireland.[5]

The Queen's Bench Division of the High Court of Justice refused to make an order to strike the name of a solicitor off the Roll of Solicitors of the Supreme Court simply on the ground that the Supreme Court of a colony had made an order that the solicitor should be struck off the Rolls.[6]

Where a bankrupt had sold his stock-in-trade and gone to Australia, was there arrested and brought back to England on a charge of offences against the Debtors Act, and on his arrest a sum of money, proceeds of the sale, was found on him and taken possession of by the Australian police and by them remitted to the solicitors of the trustee of the bankrupt's estate; it was held that the money was not property recovered or preserved in legal proceedings within s. 28 of the Solicitors Act, 1860, and therefore that an

1 S. 2 (1). 2 S. 2 (2). 3 S. 3 (2). 4 S. 6.
5 Ss. 4, 5. 6 *In re a Solicitor*, L. R. (1898) 1 Q. B. 331.

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order could not be made under that section charging the solicitors' costs upon it.[1]

Judgments, decrees, orders, and other judicial proceedings of colonial Courts, as well as affidavits, pleadings, and other legal documents filed or deposited in colonial Courts, may be proved by examined or duly authenticated copies.[2] Documents admissible in evidence in England, Wales, or Ireland, without proof of the authenticating seal or stamp or signature, or of the judicial or official character of the person appearing to have signed the same, are admissible in evidence on the same terms in any British colony.[3]

Primâ facie evidence of any proclamation, order, or regulation issued by His Majesty or by the Privy Council, or by or under the authority of the Commissioners of the Treasury, the Commissioners for executing the office of Lord High Admiral, the Secretaries of State, the Committee of the Privy Council for Trade, and the Poor Law Board, may be given, subject to any law that may be made by any colonial Legislature, in all colonial Courts and in legal proceedings in the colonies by

1. The production of a copy of the *Gazette* purporting to contain such proclamation, order, or regulation; or
2. The production of a copy of such proclamation, order, or regulation purporting to be printed by the Government printer or under the authority of the colonial Legislature; or
3. The production of a copy or extract purporting to be certified to be true by the Clerk of the Privy Council, or by any member of the other public bodies above mentioned. No

[1] *In re Humphreys*, L. R. (1898) 1 Q. B. 520.

[2] 14 & 15 Vict. c. 99, s. 7, where mode of authentication is specified; *Appleton* v. *Lord Braybrook*, 6 M. & S. 34; *Buchanan* v. *Rucker*, 9 East, 192; *Clarke* v. *Emery*, 1 F. & F. 446; *Leishman* v. *Cochrane*, 12 W. R. 181.

[3] 14 & 15 Vict. c. 99, s. 11.

proof of the handwriting or official character of any person certifying is necessary.[1]

A statutory declaration was made in New South Wales in the most formal manner, and duly certified by a notary public, with reference to a fund in court, the subject of a suit in the High Court of Chancery in England. The declaration was not intituled in the cause. On an affidavit being made verifying the signatures of the declarants, it was allowed to be filed therewith.[2]

Notaries public are appointed in the colonies at the discretion of the Master of the Faculties under 25 Hen. 8, c. 21, by which statute, however, no qualifications are prescribed. A gentleman who was a chartered accountant and held various official appointments in Victoria and other States of the Commonwealth of Victoria, and who produced influential testimonials and certificates of fitness for the position, was appointed by the Master of Faculties, although not belonging to the legal profession, and after an exposition of the circumstances guiding him in fixing the number to be appointed in any particular place where appointment was in his discretion.[3]

1 31 & 32 Vict. c. 37, ss. 2, 3.
2 *Whiting* v. *Bassett*, L. R. 14 Eq. 70.
3 *Bailleau* v. *Victorian Society of Notaries*, L. R. (1904) P. 180.

CHAPTER V.

APPEALS FROM THE COLONIES.

CHAP. V.

Appeals from the colonies.

IT is the settled prerogative of the Crown to receive appeals in colonial cases.[1]

The King has authority by virtue of his prerogative to review the decisions of all colonial Courts, whether the proceedings be of a civil or criminal character, unless His Majesty has parted with such authority. But the inconvenience of entertaining such appeals in cases of a strictly criminal character is so great, the obstruction that it would offer to the administration of justice in the colonies is so obvious, that it is very rarely that applications of that character to the Judicial Committee have been attended with success.[2] Where the judge commented upon the prisoner having refused to give evidence, it was held on an appeal from New South Wales that such comment was not precluded by the Criminal Law and Evidence Amendment Act of the colony (55 Vict. No. 5), and was no ground on which to grant the appeal.[3] Where, however, questions are raised of great and general importance, and likely to occur often; and where the due and orderly administration of the law has been interrupted or diverted into a new course, which might create a precedent for the future;

[1] *In re Bishop of Natal*, 3 Moo. P. C. C., N. S., p. 156. As to appeals from Colonial Courts of Admiralty, see 53 & 54 Vict. c. 27, s. 6.

[2] *Falkland Islands Co.* v. *Reg.*, 1 Moo. P. C. C., N. S., p. 312; approved in *In re Dillet*, L. R. 12 App. 459; cp. *In re Ames*, 3 Moo. P. C. C. 409; *Riel* v. *Reg.*, L. R. 10 App. 675; *Brown* v. *A.-G. for New Zealand*, L. R. (1898) A. C. 234; 67 L. J. P. C. 7.

[3] *Kops* v. *The Queen*; *ex parte Kops*; L. R. (1894) A. C. 650; 64 L. J. P. C. 34.

and where there are no other means of preventing those consequences; an appeal will be entertained by the Committee.[1] But His Majesty will not review or interfere with the course of criminal proceedings unless it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done.[2] Still less will His Majesty be advised to grant leave to appeal in criminal cases where it is not even suggested or surmised that such injustice has been done.[3] And special leave to appeal is not given in a criminal case where the sentence was founded on the verdict of a jury, and there was evidence for the jury, and no special matter to countervail it.[4]

Where a Canadian Act, passed under the authority of an Imperial Act, limited the right of appeal to Her Majesty in Council to causes in which the sum in dispute was more than £500, saving however the rights and prerogatives of the Crown; and the sum in dispute was less than £500; leave to appeal was refused by the Privy Council.[5] In a subsequent case, however, where a similar point arose, leave to appeal was granted; and it was observed that in *Cuvillier* v. *Aylwin* the proviso in s. 43 of the Canadian Act (34 Geo. 3, c. 6), expressly reserving the royal prerogative, did not appear to have been directly adverted to.[6] And in another case[7] the Judicial Committee overruled *Cuvillier* v. *Aylwin* upon the general principle that in any case where a prerogative of the

1 *Reg.* v. *Bertrand*, L. R. 1 P. C. 520; cp. *Reg* v. *Murphy*, L. R. 2 P. C. 35, 535. And see *Reg.* v. *Coote*, L. R. 4 P. C. 599; *In re McDermott*, L. R. 1 P. C. 260; *Nelson* v. *Reg.* L. R. (1902) A. C. 250; 71 L. J. P. C. 55.

2 *In re Dillett*, L. R. 12 App. 459. The rule in this case was reaffirmed in *Ex parte Carew*, L. R. (1897) A. C. 719; 66 L. J. P. C. 95.

3 *Ex parte Deeming*, L. R. (1892) A. C. 422.

4 *Ex parte Aldred*, L. R. (1902) A. C. 81; 71 L. J. P. C. 27.

5 *Cuvillier* v. *Aylwin*, 2 Knapp, 72.

6 *In re Marois*, 15 Moo. P. C. C. 189.

7 *Cushing* v. *Dupuy*, L.R. 5 App. 409.

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Crown has existed, precise words must be shown to have taken it away. But their Lordships will not advise His Majesty to admit an appeal from the Supreme Court of the Dominion of Canada, save where the case is of gravity, involving matter of public interest or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance, or of a very substantial character.[1] But it by no means follows that leave will be recommended in all cases in which these features concur. A case may be of a substantial character, may involve matters of general public interest, and may raise important questions of law; and yet the judgment from which leave to appeal is sought may appear plainly right, or at least unattended with sufficient doubt to justify their Lordships in advising Her Majesty to grant leave to appeal.[2] Petition for special leave to appeal was refused in a case depending on a disputed matter of fact, whether there had been a gift or a sale of certain goods of the value of £1000;[1] but granted where there was an important question at issue.[3] So also special leave was refused to appeal from two concurrent judgments of the Courts in Canada affirming the competency and validity of an Act of the Dominion Parliament, it appearing that there was no substantial question to be determined nor any doubt of the soundness of the decisions, nor any reason to apprehend difficulty or disturbance from leaving the decisions untouched.[4]

An appeal lies to His Majesty in Council from a decision of the Court of King's Bench for Lower Canada on a Petition of Right.[5]

1 *Prince* v. *Gagnon*, L. R. 8 App. 103; followed in *Clergue* v. *Murray*; *ex parte Clergue*, L. R. (1903) A. C. 521; 72 L. J. P. C. 99; *Canadian Pacific Railway Co.* v. *Blain*, L. R. (1904) A. C. 453; 73 L. J. P. C. 109.

2 *La Cité de Montréal* v. *Les Ecclésiastiques du Séminaire de St. Sulpice de Montréal*, L. R. 14 App. p. 662.

3 *Carter* v. *Molson*, L. R. 8 App. 530.

4 *Valin* v. *Langlois*, L. R. 5 App. 115.

5 *Reg.* v. *Demers*, L. R. (1900) A. C. 103; 69 L. J. P. C. 5.

In *Théberge* v. *Laudry*[1] the appellant had been elected a member of the Quebec Legislative Assembly, and afterwards unseated by the Superior Court under the Quebec Controverted Elections Act, 1875, for corrupt practices. Section 90 of the Act provided that the judgment of the Superior Court sitting in review should not be susceptible of appeal. Application for leave to appeal to Her Majesty in Council was refused by the Judicial Committee. This decision (as was explained in the subsequent case of *Cushing* v. *Dupuy*[2]) turned on the peculiar nature of the jurisdiction delegated to the Superior Court, and not merely on the prohibitory words of the statute. It was distinctly and carefully rested on the peculiarity of the subject-matter, which concerned not merely ordinary civil rights, but rights and privileges always regarded as pertaining to the Legislative Assembly in complete independence of the Crown, so far as they properly existed; and consequently it was held that, in transferring the decision of these rights from the Assembly to the Superior Court, it could not have been intended that the determination in the last resort should belong to the Queen in Council. But at the same time the general principle that the prerogative of the Crown cannot be taken away except by express words, was distinctly affirmed.

The principle of the decision in *Théberge* v. *Laudry* was followed in the case of *Moses* v. *Parker, Ex parte Moses*.[3] That was a dispute respecting a claim to land vested in the Crown and not the subject of any prior grant. By Act No. 10 of 1858, ss. 5, 8, the Court's decision was to be final; it was to be guided by equity and good conscience only, and was not to be bound by strict rules of law or equity or any legal forms. The Judicial Committee decided that the

[1] L. R. 2 App. 102. [2] L. R. 5 App. 409; see p. 419.
[3] L. R. (1896) A. C. 245; 65 L. J. P. C. 18.

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Crown's prerogative to grant special leave to appeal was inapplicable to a decision so authorised. In refusing the leave their Lordships pointed out that applications for land yet ungranted by the Crown were certainly not ordinary civil rights. They were created and regulated by the law of each colony; and in the colony in question (Tasmania) were up to 1858 carefully kept out of the province of legal claims. In 1858 they were transferred to the (Supreme) Court with the express provision that its decision should be final. The Legislature ordered the Court to be guided by the same principles as were laid down for the Commissioners, to whom such disputes were referred previously to 1858, and expressly exonerated them from all rules of law or practice. It was clear that these affairs were placed in the hands of the judges as persons from whom the best opinion might be obtained, and not as a court administering justice between litigants. Such functions did not attract the prerogative of the Crown to grant appeals.

In *The Daily Telegraph Newspaper Co.* v. *McLaughlin*,[1] which was the first case in which special leave was applied for to appeal from a decision of the High Court of the Commonwealth of Australia, the Judicial Committee stated that such applications would be treated in the same manner as applications for special leave to appeal from the Supreme Court of Canada; and repeated and adopted the observations on that subject quoted *ante* on p. 192, from *Prince* v. *Gagnon* and *La Cité de Montréal* v. *Les Ecclésiastiques de St. Sulpice de Montréal*.

There is an indisposition on the part of the Judicial Committee of the Privy Council to interfere with the forms and practice of colonial courts.[2]

In a dispute in one of His Majesty's colonies between

1 L. R. (1904) A. C. 777; 73 L. J. P. C. 95.
2 *Grant* v. *Etna Insurance Co.*, 15 Moo. P. C. C. 516.

two independent prelates, which previous to 25 Hen. 8, c. 29, would have been referred to the Pope, His Majesty has appellate jurisdiction, and can exercise the same by referring the matter under 3 & 4 Will. 4, c. 41, for the advice of the Judicial Committee of the Privy Council.[1]

The Crown now exercises its prerogative to receive appeals from the colonies through the Judicial Committee of the Privy Council, which is the Court of Appeal in England from the colonies,[2] except in cases under the Merchant Shipping Act, 1894,[3] by which an appeal lies, with certain exceptions, from the colonial tribunal to His Majesty's High Court of Justice in England.[4] The Judicial Committee of the Privy Council consists of the Lord President of the Privy Council; the Lord High Chancellor of Great Britain; all Privy Councillors who hold or have held any of the offices of Lord of Appeal in ordinary, Lord Chief Justice of England, Master of the Rolls, Lord Justice of the Court of Appeal, Judge of any of the late Courts of Queen's Bench, Common Pleas, Exchequer, Probate, or Admiralty, or of Chief Judge in Bankruptcy; all past Presidents of the Council and Lord Chancellors; together with any two others whom His Majesty shall think fit to appoint from time to time on the Committee,[5] and such members of His Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Acts 1876 and 1887 described as High judicial offices.[6] These offices are those of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial

1 *In re Lord Bishop of Natal*, 3 Moo. P. C. C., N. S., 115.

2 3 & 4 Will. 4, c. 41, s. 2. And see 6 & 7 Vict. c. 38 (ss. 4, 6, 8, 13, 16 repealed, and the portions of s. 11 referring to Vice-Admiralty Courts); and 7 & 8 Vict. c. 69 (ss. 2–7 repealed, not affecting appeals from the colonies).

3 57 & 58 Vict. c. 60.

4 Ibid. s. 478.

5 See 3 & 4 Will. 4, c. 41, s. 1; 37 & 38 Vict. c. 35, sched. as to 3 & 4 Will. 4 c. 41, 20 & 21 Vict. c. 77, s. 115; 39 & 40 Vict. c. 59, ss. 6, 14; 44 Vict. c. 3.

6 50 & 51 Vict. c. 70, s. 3.

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Committee of the Privy Council, or of Judge of one of His Majesty's Superior Courts of Great Britain and Ireland, or of Lord of Appeal in ordinary, or of member of the Judicial Committee of the Privy Council. His Majesty may also summon other Privy Councillors to the Committee.[1] By 34 & 35 Vict. c. 91 power was given to His Majesty to appoint four paid members within twelve months, who had been either judges of a Superior Court at Westminster, or Chief Justices of the High Court of Judicature at Fort William, Madras, or Bombay, or of the late Supreme Court of Judicature at Fort William. Three members of the Committee form a *quorum*.[2] By 58 & 59 Vict. c. 44, if a person, who is or has been Chief Justice or Judge of the Supreme Court of the Dominion of Canada, or of a Superior Court in any of the provinces of Canada, or in New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, Western Australia, Cape Colony, Natal, or of any other Superior Court in His Majesty's dominions named in that behalf by His Majesty in Council, is a member of the Privy Council, he shall be a member of the Judicial Committee of the Privy Council. But not more than five such members may exist at any one time.

By the laws in force in certain of the colonies at the time of the creation of this Court of Appeal in England from the colonies no appeals could be brought to His Majesty in Council from any Courts in those colonies except Courts of Error or Appeal.[3] It was therefore enacted by 7 & 8 Vict. c. 69, s. 1, that it should be competent to Her Majesty by Order in Council to provide for the admission of appeals to herself in Council from any Court in any British colony or possession abroad, although such Court might not be a Court of Error or Appeal within the colony. *Russell*

1 3 & 4 Will. 4, c. 41, s. 5. 2 14 & 15 Vict. c. 83, s. 16.
3 See *In re Assignees of Manning*, 3 Moo. P. C. C. 154; *In re Cambridge*, 3 Moo. P. C. C. 175

v. *Reg*,[1] was an appeal direct from the Supreme Court of New Brunswick without a prior resort to the Supreme Court of the Dominion of Canada.[2]

By the Australian Commonwealth Judiciary Act, 1903, s. 39, sub-s. 2, the right of appeal from the Supreme Court of Queensland to His Majesty in Council in certain cases was taken away, an appeal only lying from that Court to the High Court of Australia. But in *The Colonial Sugar Refining Co.* v. *Irving*[3] the Judicial Committee held that the Act was not retrospective; and that the right to appeal to the King in Council in a suit pending when the Act was passed and decided by the Supreme Court afterwards, being vested in the appellants at the date of the passing of the Act, was not taken away.

Under the Revised Statutes of Ontario, 1897, c. 48, s. 1, it is essential that an appeal to the King in Council should be admitted in the Court of Appeal. That court is bound to exercise its judgment whether the particular case is appealable or not; and when it appears from its order that it has left that question open, the appeal is incompetent.[4]

In order to prosecute an appeal from a colonial Court to His Majesty in Council leave must be obtained from the Court below according to the rules in the colony with reference to such appeals. If leave, however, has not been obtained from the Court below, either because there are no rules,[5] or because the Court below has no power to allow appeals direct to His Majesty in Council,[6] or because the rules in the colony

1 L. R. 7 App. 829; 51 L. J. P. C. 77.

2 See *Harrison* v. *Scott*, 5 Moo. P. C. C. 357; *A.-G. of Jamaica* v. *Manderson*, 6 Moo. P. C. C. 239; *In re Barnett*, 4 Moo. P. C. C. 453; *Hitchins* v. *Hollingsworth*, 7 Moo. P. C. C. 228.

3 L. R. (1905) A. C. 369; 74 L. J. P. C. 77.

4 *Gillett* v. *Lumsden*, L. R. (1905) A. C. 601.

5 *Siemens* v. *Heirs of Bufe*, 11 Moo. P. C. C. 62.

6 *Flint* v. *Walker*, 5 Moo. P. C. C. 179; *Bank of Australasia* v. *Breillat*, 6 Moo. P. C. C. 152; *Marchioness of Bute* v. *Mason*, 7 Moo.

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have not been complied with—*e.g.*, in that the amount in dispute is less than the appealable value,[1] or that the time for presenting an appeal has expired,[2] or that proper security for costs has not been given,[3] &c., a petition to His Majesty in Council may be presented for special leave to appeal, which will be referred to the Judicial Committee for them to advise whether it should be granted or refused.

The measure of value for determining a plaintiff's right to appeal is the amount for which the defendant has successfully resisted a decree. Mesne profits, if demanded by the plaintiff, must enter into the calculation of the appealable value.[4]

Special leave to appeal will be given where the question at issue is not susceptible of a money valuation, but is one of great importance to the parties—*e.g.*, in a suit for divorce.[5]

Where leave had been obtained in regular form in the colonial Court, an order granting leave to prosecute it *in formâ pauperis* was made.[6] And where a colonial code made no provision for appeals *in formâ pauperis*, and it was contended that the case as regards amount, value, and nature was fit to be taken on appeal, special leave was, under the circumstances of the case, granted.[7]

A petition for special leave to appeal must state fully but succinctly the grounds upon which it is based, the record not being before their lordships until forwarded by the proper authorities.[8]

P. C. C. 1; *Bank of Australasia* v. *Harris*, 15 Moo. P. C. C. 97; *Bunny* v. *Judges of New Zealand*, 15 Moo. P. C. C. 164; *In re Cambridge*, 3 Moo. P. C. C. 175.

1 See Topical Index of Cases on Appeal, Practice.

2 See ibid. 3 See ibid.

4 *Mohideen Hadjiar* v. *Pitchey*, L. R. (1893) A. C. 193; 62 L. J. P. C. 96.

5 *Le Mesnier* v. *Le Mesnier*, L.R. (1894) A. C. 283. See also Practice Cases.

6 *Quinlan* v. *Child*, L. R. (1900) A. C. 496.

7 *Ponamma* v. *Arumugam*, L. R. (1902) 561.

8 *Canada Central Railway Co.* v. *Murray*, L. R. 8 App. 574.

When special leave to appeal has been given on an *ex parte* application and upon an erroneous statement contained in the petition for leave, the order allowing such leave will be discharged with costs.[1]

And where, by a special agreement sanctioned by the Court below, the petitioner had come in and consented to be made a party to the cause in appeal, and to be barred by the order of the Court below made therein, and the agreement defined and restricted the powers of the Court below, and provided that its order should be considered a final disposition of all contentions, whether then in litigation or not, special leave to appeal was refused on the ground that the Court below was acting on the terms of a special reference, and not in its ordinary jurisdiction as a Court of Appeal.[2]

When leave to appeal has been obtained, the appellant must prepare a transcript of the proceedings below and transmit it to the office of the Privy Council. Along with the transcript must be forwarded a written account of the reasons given by the judges of the Court below for the judgment pronounced by them.[3] If the transcript is not printed in the colony, the appellant must within a certain time call on the Registrar of the Privy Council to cause it, or such part of it as the appellant and respondent consider necessary, to be printed.

The transcript having been delivered at the Privy Council Office, the appellant presents his petition of appeal,[4] which usually merely contains a short statement of the proceedings below, and that the petitioner is aggrieved by the judgment, has obtained leave to appeal, and prays for a reversal. The petition is lodged

1 *Bulkeley* v. *Scutz*, L. R. 3 P. C. 196; and *cf. ex parte Baudains*, L. R. 13 App. 832.

2 *Attorney-General of Nova Scotia* v. *Gregory*, L. R. 11 App. 229; 55 L. J. P. C. 40. For cases in which special leave to appeal has been granted or refused, see Topical Index of Cases on Appeal, Practice.

3 See 7 & 8 Vict. c. 69, s. 11.

4 Petitions of appeal from Canada may be presented before delivery of the transcript.

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by bringing it into the Privy Council Office and leaving it with the clerks there.

Originally the petition was submitted to His Majesty at the first Council meeting after the lodgment, when His Majesty made an Order referring it to the Judicial Committee to hear and report upon it.[1] Subsequently authority was given to the Judicial Committee to proceed in hearing and reporting upon appeals duly presented without any special Order in Council referring the same to them, provided that His Majesty in Council had by Order in Council in the month of November directed that all appeals should be referred to the said Judicial Committee on which petitions might be presented to His Majesty in Council during twelve months next after the making of such Order.[2] This Order in Council is passed every November as a matter of course.

On hearing that the petition of appeal has been lodged, the respondent appears to it by sending a letter to the Registrar stating his full name, the Court appealed from, and the date of the judgment appealed from.

It is rather curious that there is no provision apparently for securing that notice of the appeal being lodged should be given to the respondent.[3] The proceedings in the Court below will, however, in ordinary cases have given him notice. If he does not appear the appellant may obtain a summons to him from the Judical Committee to appear within two months, and post it at the Royal Exchange,[4] or Lloyd's Coffee House; followed, if necessary, by a peremptory order to appear in six weeks, posted at the same places. When the respondent has appeared, the parties prepare their respective cases, which are always drawn and signed by counsel.

1 3 & 4 Will. 4, c. 41, s. 3. 2 7 & 8 Vict. c. 69, s. 9.
3 See *Willis* v. *Gipps*, 5 Moo. P. C. C. p. 384.
4 *Willis* v. *Gipps*, 5 Moo. P. C. C. p. 354, except in the case of Quebec, see art. 1251 of Cod. Civ. Proc.

The cases are prepared with the assistance of the transcript. The appellant's case details so much of the proceedings below as are necessary to support his view, placing in an appendix such parts of the transcript as require special notice, and cannot conveniently be inserted in the case itself. Then the reasons of the appeal are shortly set forth. No particular form is necessary.[1]

Each party delivers to his opponent a copy of his case, after he has lodged it. Whichever party first lodges his case may obtain an order on his opponent to lodge his within one month from service of the order; on default of compliance with which another order may be obtained for delivery of the case within a fortnight on pain of the cause being set down for hearing *ex parte*.

Finally the cause is set down in a list, and comes on in its turn for argument by counsel.

After hearing the arguments the Judicial Committee makes a report or recommendation to Her Majesty in Council, the nature of which is always stated in open court.[2] A majority of the members present must concur in such report or recommendation.[3]

An objection not raised in the Court below cannot be taken in the appellate Court unless it is patent on the face of the proceedings, so that the appellate Court can take judicial notice of it.[4]

The Judicial Committee will refuse to hear argument on issues not raised by the pleadings and evidence, and on which the Court below has not adjudicated.[5] When parties go before a jury to determine particular issues, and when by their conduct they leave aside one question altogether, and do not direct

[1] A precedent of cases on appeal for appellant and respondent respectively is given in Appendix I.

[2] 3 & 4 Will. 4, c. 41, s. 3. [3] Ibid. s. 5.

[4] *Frankland* v. *McGusty*, 1 Knapp, 274; *Devine* v. *Holloway*, 14 Moo. P. C. C. 290; *Council of the Borough of Randwick* v. *Australian Cities Investment Corporation*, L. R. (1893) A. C. 322; 62 L. J. P. C. 116.

[5] *Grey* v. *Manitoba and North-Western Railway Co. of Canada*, L. R. (1897) A. C. 254; 66 L. J. P. C. 661.

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their adversary's attention to a point of fact which may be answered by evidence on the other side, it is too late after verdict to raise that question. It would be taking their adversary by surprise. It would be raising new questions after the tribunal, before whom such questions are properly decided, had decided the case, when the opportunity of raising and deciding them has passed away. No more inflexible rule has ever obtained in the Courts than that you shall not raise a question after a trial which has not been raised at the time, which question, if it had been raised, could have been answered by evidence on the other side.[1]

A point presented for the first time in a Court of Appeal ought to be most jealously scrutinised. A Court of Appeal ought only to decide in favour of the appellant on a ground there put forward for the first time if it be satisfied beyond doubt, first, that it has before it all the facts bearing upon the new contention as completely as would have been the case if the controversy had arisen at the trial; and, next, that no satisfactory explanation could have been offered by those whose conduct is impugned, if an opportunity for explanation had been afforded them when they were in the witness box.[2]

It is inexpedient and contrary to the established practice of their Lordships to give speculative opinions on hypothetical questions submitted to them. The questions they are asked to decide must arise in concrete cases involving private rights.[3] And special leave will not be granted to appeal from a judgment which is not impeached, merely with the view to have an abstract point of law, not arising in the case, decided by their Lordships.[4]

1 *Victoria Corporation* v. *Patterson*, L. R. (1899) A. C. p. 619; 68 L. J. P. C. 128.

2 *The Tasmania*, L. R. 15 App. p. 225 *per* Lord Herschell.

3 *A.-G. for Ontario* v. *Hamilton Street Railway Co.*, L. R. (1903) A. C. 524; 72 L. J. P. C. 105.

4 *R.* v. *Louw, Ex parte A.-G. of Cape of Good Hope*, L. R. (1904) A. C. 412; 73 L. J. P. C. 65.

Where an appeal to H.M. had been admitted in the Supreme Court, and security deposited therein for costs to abide the judgment of H.M., but the appeal was dismissed for want of prosecution under Rule V. of the Order of 1853, the respondent should apply to the Supreme Court to correct its order by directing, in accordance with its manifest intention, that the costs should abide the result of the appeal. If the application is refused, the respondent should apply for special leave to appeal from such refusal.[1]

In dealing with costs in cases between the Crown and a subject the rule of the House of Lords will be adhered to by the Judicial Committee, by which the Crown neither pays nor receives costs unless the case is governed by a local statute, or where the circumstances are exceptional.[2]

Where a doubt arose whether the judgment from which it was sought to appeal was final, but the questions in controversy were important, and it was believed a decision on appeal would put an end to further litigation, the Judicial Committee granted special leave to appeal.[3]

After an appeal has been admitted and referred to the Judicial Committee, interlocutory petitions should be addressed to the Committee, not to His Majesty in Council.

The Judicial Committee has no jurisdiction to determine any matter litigated in an inferior Court except on appeal from that Court.[4]

But by s. 4 of 3 & 4 Will. 4, c. 41, His Majesty may refer to the Judicial Committee any such matter

1 *Milson* v. *Carter*, L. R. (1893) A. C. 638 ; 62 L. J. P. C. 126.

2 *Johnson* v. *Reg.* L. R. (1904) A. C. 817 ; 73 L. J. P. C. 113.

3 *Salisbury Gold Mining Co.* v. *Hathorn*, L. R. (1897) A. C. 268 ; 66 L. J. P. C. 62. See *In re Nahon and Pariente*, 2 Knapp, 56 ; *In re Lerien*, 10 Moo. P. C. C. 31 ; *Tronson* v. *Dent*, 8 Moo. P. C. C. 419 ; *In re Gould*, 2 Moo. P. C. C. 188 ; as to no appeal lying except from a final judgment, decree, or order, *Macdonald* v. *Belcher*, L. R. (1904) A. C. 429.

4 *In re Nahon and Pariente*, 2 Knapp, 66 ; *In re Lerien*, 10 Moo. P. C. C. 31 ; *In re Gould*, 2 Moo. P. C. C. 188.

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whatsoever other than appeals as His Majesty shall think fit; and the Committee shall thereupon hear or consider the same, and shall advise His Majesty thereon as in the case of regular appeals. It is under this enactment that such cases as those mentioned below[1] are brought before the Judicial Committee.

Where special leave to appeal has been granted on the ground that the appellant desires to raise a particular question of great and general importance, he cannot be permitted at the hearing to say that no such question arises, and to argue that the case turns upon a question of fact on which the Court below was in error.[2]

Where a previous decision of the Judicial Committee has been given *ex parte*, although great weight is due to it, their Lordships are at liberty to examine the reasons upon which that decision was arrived at; and if they should find themselves forced to dissent from these reasons, to decide upon their own view of the law.[3]

The obligation put upon an appellant of giving bail for £200 under Rule 15 of the Privy Council Rules

[1] *In re Justices of the Court of Common Pleas at Antigua*, 1 Knapp, 267; *In re Monckton*, 1 Moo. P. C. C. 455; *In re George Whitfield*, 2 Moo. P. C. C. 269; *In re Muir*, 3 Moo. P. C. C. 150; *In re Wells*, ibid. 216; *Smith* v. *Justices of Sierra Leone*, ibid. 361; *In re Bailiff and Jurats of Royal Court of Guernsey*, 5 Moo. P. C. C. 49; *In re Island of Cape Breton*, ibid. 259; *Representatives of Island of Grenada* v. *Sanderson*, 6 Moo. P. C. C. 38; *Montagu* v. *Lieut.-Governor and Executive Council of Van Diemen's Land*, ibid. 489; *Smith* v. *Justices of Sierra Leone*, 7 Moo. P. C. C. 174; *Rainy* v. *Same*, 8 Moo. P. C. C. 47; *Emerson* v. *Judges of Supreme Court of Newfoundland*, 8 Moo. P. C. C. 157; *Cloete* v. *Reg.*, ibid. 484; *In re States of Jersey*, 9 Moo. P. C. C. 185; *In re Same, re Gibaut*, 11 Moo. P. C. C. 320; *The Jersey Bar*, 13 Moo. P. C. C. 195; *In re States of Guernsey*, 14 Moo. P. C. C. 368; *In re States of Jersey*, 15 Moo. P. C. C. 195; *In re Bishop of Natal*, 3 Moo. P. C. C., N. S., 115; *In re Wallace*, L. R. 1 P. C. 283; *In re Pollard*, L. R. 2 P. C. 106; *MacDermott* v. *Judges of British Guiana*, L. R. 2 P. C. 341; *In re Ramsay*, L. R. 3 P. C. 427; *Attorney-General of Queensland* v. *Gibbon*, L. R. 12 App. 442; *Special Reference from the Bahama Islands*, L. R. (1893) A. C. 138.

[2] *Corporation of St. John's* v. *Central Vermont Railway Co.*, L. R. 14 App. 590.

[3] *Tooth* v. *Power*, L. R. (1891) A. C. p. 292.

of 1865 for appeals in ecclesiastical and maritime causes may be dispensed with in a proper case. Accordingly it was dispensed with where bail had been already given in the colony for £300.[1]

Their Lordships will consolidate appeals at any stage if it appears convenient that they should be heard together.[2]

It is most desirable that Judges in the colonies should always comply with the rule of the Judicial Committee of the 10th February, 1845, as to giving reasons for their judgments.[3] Reasons given by a judge of a Court from which an appeal lies to the Privy Council ought to be stated publicly at the hearing and communicated to the Registrar of the Privy Council. Their Lordships will not look at notes merely communicated to one of the parties.[4]

No injunction will be granted against a decree of a colonial Court by the Court of Chancery in England, an appeal lying to the Privy Council.[5]

When there have been concurrent findings of fact by the Judges or Courts below, the question on appeal to the Judicial Committee is not what conclusion their Lordships would have arrived at if the matter had for the first time come before them, but whether it has been established that the judgments below were clearly wrong.[6] Special leave to appeal in a case involving only an issue of fact will be refused.[7]

It is not the practice of the Judicial Committee to disturb a judgment on a question of fact where the

1 *Hunter* v. *S.S. Hesketh*, L. R. (1891) A C. 628.

2 *Hiddingh* v. *Denyssen*, L. R. 12 App. 107.

3 *Colonial Insurance Co. of New Zealand* v. *Adelaide Marine Insurance Co.*, L. R. 12 App. 128. But as to notes of evidence, see *Baudains* v. *Liquidators of Jersey Banking Co.*, L. R. 13 App. 832.

4 *Richer* v. *Voyer*, L. R. 5 P. C. p. 481; *Brown* v. *Gugy*, 2 Moo. P. C. C., N. S., p. 365.

5 *Henderson* v. *Henderson*, 3 Hare 100. *Cf. Smith* v. *Moffatt*, L. R. 1 Eq. 397; *White* v. *Hall*, 12 Ves. 321.

6 *Allen* v. *Quebec Warehouse Co.*, L. R. 12 App. 101.

7 *Canada Central Railway Co.* v. *Murray*, L. R. 8 App. 574; *Prince* v. *Gagnon*, ibid. 103.

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Courts below have unanimously agreed in their conclusions on the evidence, except where it is made plain that there has been a miscarriage of justice, or at least that the evidence has not been adequately investigated or considered.[1]

Where, on an appeal from a colonial Court to H.M. in Council, witnesses to facts requisite for the purposes of the judgment were in London, instead of remitting the case the Judicial Committee ordered the evidence to be taken on Commission.[2]

When a question of law is raised for the first time in a Court of last resort upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact, in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below. But that course ought not in any case to be followed, unless the Court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the new plea. To accept the proof adduced by a defendant in order to clear himself of a charge of fraud, as representing all the evidence which he could have brought forward in order to rebut a charge of negligence, might be attended with the risk of doing injustice.[3]

Where facts have not been submitted to the Court below, an appeal will not be granted on the ground that, if they had been so submitted, they would have

1 *Archambault et Vir* v. *Archambault*, L. R. (1902) A. C. 575; 71 L. J. P. C. 131.

2 *Bank of China, &c.* v. *American Trading Co.*, L. R. (1894) A. C. 266.

3 *Connecticut Fire Insurance Co.* v. *Kavanagh*, L. R. (1892) A. C. p. 480.

caused the Court below to make a different order.[1] But evidence not adduced in the Court below, and not forming part of the transcript, has been admitted on motion to be used at the hearing of the appeal, subject to all just exceptions.[2]

Where a defendant objected to a verdict on the ground that it was not warranted by the evidence, but neglected to move the Court for a new trial in the manner directed by the rules and practice of the Court, the Judicial Committee held that Her Majesty in Council could not alter the verdict or set it aside, and could not be advised to direct a new trial, the appellant not having applied in that behalf to the Court in the regular course.[3] In *Stanford* v. *Brunette*[4] it was laid down that the record transmitted by the Court below is alone to be looked at; and that short-hand writer's notes cannot be received to impeach the judge's notes.

Leave to appeal *in formâ pauperis* is not granted as a matter of course. It ought not to be granted where it is made apparent that the proposed appeal is idle and frivolous. It would be wrong to put parties to the expense of opposing such an appellant in a case where he could not recover costs if successful.[5]

The Judicial Committee will not entertain a petition for leave to prosecute an appeal *in formâ pauperis* when the Court below has power to grant leave on the usual conditions, unless in the first instance an application for leave to appeal has been made in due time to the Court from which it is proposed the appeal should be brought.[6]

Special leave was given to a respondent to enter a cross appeal without a petition in *Walker* v. *Simpson*.[7]

1 *Lyall* v. *Jardine*, L. R. 3 P. C. 318.
2 *Hughes* v. *Porral*, 4 Moo. P. C. C. 41.
3 *Dagnino* v. *Bellotti*, L. R. 11 App. 604. 4 14 Moo. P. C. C. 60.
5 *Quinlan* v. *Quinlan*, L. R. (1901) A. C. 612; 70 L. J. P. C. 122.
6 *Walker* v. *Walker*, *Ex parte Walker*, L. R. (1903) A. C. 170; 72 L. J. P. C. 36. 7 L. R. (1903) A. C. 208; 72 L. J. P. C. 58.

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The Judicial Committee is always extremely loth to send a case for re-trial, much more to decide it upon points which appear to have been raised for the first time at their Bar, and which may possibly have been treated as agreed upon or too clear for argument by the Court below.[1]

When a decision of the Judicial Committee has been reported to His Majesty, and has been sanctioned and embodied in an Order in Council, it becomes the decree or order of the final Court of appeal; and it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution.[2]

An action is maintainable in the Courts of England upon an order of the Judicial Committee directing payment of costs on an appeal from the judgment of a colonial Court on a petition of intervention in a suit by creditors for the attachment of debts and property of their debtor, the decree of the Judicial Committee being final as regards the petition of intervention, though not necessarily so in the main suit.[3]

Apparently the Crown has no greater right than a subject to be let in to appeal in a general case in which its interests are concerned.[4]

1 *Mackay* v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. p. 409; *Owners of S.S. Pleiades* v. *Owners of S.S. Jane*, L. R. (1891) A. C. 259. As to disregard of technicalities of pleading by the Judicial Committee, see also *Le Breton* v. *Ennis*, 4 Moo. P. C. C. 331; *Black* v. *Ottoman Bank*, 15 Moo. P. C. C. 472; and *McLean* v. *McKay*, L. R. 5 P. C. p. 337.

2 *Pitts* v. *La Fontaine*, L. R. 6 App. 482.

3 *Hutchinson* v. *Gillespie*, 25 L. J. Ex. 103.

2 *Laing* v. *Ingham*, 3 Moo. P. C. C. 26.

CHAPTER VI.

IMPERIAL STATUTES IN FORCE RELATING TO THE COLONIES.

Section 1.

Imperial Statutes relating to the Colonies in general.

11 & 12 Will. 3, c. 12: Punishment in Great Britain of Governors of plantations for crimes by them committed in the plantations.[1]

6 Ann. c. 41 (Ruff 7), s. 25: Incapacitating Governors or Deputy Governors of plantations from being elected to, or of sitting or voting in, House of Commons.

18 Geo. 3, c. 12: Taxation of Colonies; renouncing power of taxation in colonies, provinces, and plantations in North America and the West Indies. S. 2 repealed.

22 Geo. 3, c. 75, ss. 2–4: Colonial Leave of Absence. Offices in colonies, amotion from,[2] leave of absence, &c. Amended by 54 Geo. 3, c. 61 (s. 5 to "and that" repealed), and 57 & 58 Vict. c. 17, s. 1.

42 Geo. 3, c. 85: Trial and punishment in Great Britain of persons employed in His Majesty's service out of Great Britain for offences committed in the execution, or under colour, or in the exercise of any

[1] *Reg.* v. *Eyre*, L. R. 3 Q. B. 487. It is not clear whether this Act includes felonies or not, but its general scope seems to be confined to misdemeanours: see *R.* v. *Shawe*, 5 M. & S. 403, and Stephen's Criminal Procedure, iii. 49.

[2] *Willis* v. *Gipps*, 5 Moo. P. C. C. 379: *Montagu* v. *Lieut.-Governor and Executive Council of Van Diemen's Land*, 6 Moo. P. C. C. 489.

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Sect. 1.

Imperial Statutes relating to the colonies in general.

such employment.[1] S. 6 to "Provided always that" repealed.

46 Geo. 3, c. 54: Trial in the colonies of offences committed upon the sea, &c., by commissions directed to four or more.[2]

59 Geo. 3, c. 60: Ordination for Colonies, ss. 2–6 repealed.

5 Geo. 4, c. 84, s. 26: Protecting felons whose sentences have been remitted by the Governor of a colony in the enjoyment of property acquired since conviction.[3]

5 Geo. 4, c. 113, ss. 2–8, 9 (except "after first day of January, 1825," and "after said first day of January, 1825," and from "and being convicted" to end of section), 10, 11, 12 (to "taken to be in full force"), 39, 40 and 47: Slave trade abolition.[4]

6 Geo. 4, c. 69: Transportation. Ss. 3–5 repealed.

1 Will. 4, c. 4 (the Colonial Offices Act, 1830), s. 2: Providing for duration of patents of Governors after demise of the Crown.

1 Will. 4, c. 22 (ss. 3–5, 8–11 repealed): Granting writs of *mandamus* to judges of colonies, &c., to examine witnesses.[5]

3 & 4 Will. 4, c. 41[6]: Establishing Judicial Committee of the Privy Council to hear appeals from the

1 *R.* v. *Shawe*, 5 M. & S. 403; *General Picton's Case*, 30 State Trials, 225; *Reg.* v. *Eyre*, L. R. 3 Q. B. 487.

2 See Stephen's History of the Criminal Law, ii. 20.

3 *Vide Gough* v. *Davies*, 2 Kay & J. 623, 25 L. J. Ch. 677; *Fleming* v. *Smith*, 12 Ir. C. L. Rep. 404.

4 *Sherwill* v. *The King*, 2 Moo. P. C. C. 1 (s. 10); *Del Campo* v. *Reg.* 2 Moo. P. C. C. 15 (s. 7); *Barton* v. *Reg.*, 2 Moo. P. C. C. 19; *Jennings* v. *Hill*, 4 Moo. P. C. C. 369; *Hocquard* v. *Reg.*, 11 Moo. P. C. C. 155; *Casanova* v. *Reg.*, L. R. 1 P. C. 268.

5 *Simms* v. *Henderson*, 11 Q. B. 1015; *Hodges* v. *Cobb*, L. R. 2 Q. B. 652; *Kelsall* v. *Marshall*, 11 C. B., N. S., 266. A *mandamus* will not in general be granted for the examination of a witness in a British colony, where the same end may be obtained by the less expensive and less dilatory proceeding by commission; *Farnworth* v. *Hyde*, 14 C. B., N. S., 719.

6 *In re Pollard*, 2 P. C. 106; *In re Ramsay*, L. R. 3 P. C. 427, s. 4; *Logan* v. *Burslem*, 4 Moo. P. C. C. 284; *Hutchinson* v. *Gillespie*, 2 Moo. P. C. C. 243 (s. 17); *Falle* v. *Le Sueur*, 12 Moo. P. C. C. 501 (s. 7).

colonies. Amended by 6 & 7 Vict. c. 38 (ss. 4, 6, 8, 13, 16 repealed, and the portions of s. 11 referring to Vice-Admiralty Courts); 7 & 8 Vict. c. 69,[1] giving appeal from inferior Court in colony direct to King in Council (ss. 2–7, 13, not affecting appeals from colonies, repealed); 14 & 15 Vict. c. 83, all of which Act is repealed except s. 16, last half of, s. 17, last sentence of except the date, s. 18, as to amount of Master of Rolls' salary, and s. 24; and by 50 & 51 Vict. c. 70, ss. 3, 4. Preamble and s. 1 to "of same that," as to Judge of Prerogative Court of Archbishop of Canterbury, as to the words "the Lord High Chancellor of Great Britain for the time being," from "Lord Chief Justice" where first occurring to "bankruptcy," and from "or held" to "Britain," repealed. Ss. 2, 22, 25–27, 29, repealed.

3 & 4 Will. 4, c. 73,[2] s. 12, last half of: Abolishing slavery throughout the British colonies, plantations, and possessions abroad.

5 & 6 Vict. c. 45[3]: Copyright. Ss. 1, 26, 30 repealed; ss. 13, 14, 16, 17 repealed in part. Amended by 10 & 11 Vict. c. 95.

6 & 7 Vict. c. 7: Pardon of transported convicts; holding of property by ticket of leave men. Sections 1 and 6 repealed.[4]

6 & 7 Vict. c. 22. Colonies Evidence Act, 1843. Authorising colonial legislation for admission of evidence of barbarous and uncivilised people in the colonial Courts or before colonial magistrates. Section 2 repealed.

6 & 7 Vict. c. 38: Appeals to Judicial Committee of the Privy Council. Sections 1, 4, 6, 8, 13, 16,

[1] *Harrison* v. *Scott*, 5 Moo. P. C. C. 357; *A.-G. of Jamaica* v. *Manderson*, 6 Moo. P. C. C. 239; *In re Barnett*, 4 Moo. P. C. C. 453; *Hitchins* v. *Hollingsworth*, 7 Moo. P. C. C. 228.

[2] *Richards* v. *A.-G. of Jamaica*, 6 Moo. P. C. C. 381; *Mittelholzer* v. *Fullarton*, 6 Q. B. 989.

[3] *Low* v. *Routledge*, L. R. 1 Ch. App. 42; 3 H. L. 100 (*nom. Routledge* v. *Low*).

[4] *Barnett* v. *Blake*, 2 Drew. & Sm. 117.

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Sect. 1.
Imperial Statutes relating to the colonies in general.

repealed, and the portions of s. 11 referring to Vice-Admiralty Court. Sections 2, 3, 5, 7, 9, 10, 12, 15, partially repealed by 53 & 54 Vict. c. 27.

6 & 7 Vict. c. 98: Suppression of slave trade; colonial judges to act in. Sections 2, 3, 5–7 repealed; and in s. 1 the words "except only as is hereinafter excepted."

7 & 8 Vict. c. 12: International Copyright. Sections 1, 14, 17, 18, 21, repealed.

7 & 8 Vict. c. 49, ss. 2, 9, 10: Posts in colonies, rates of postage; so far as not inconsistent with the Post Office Act, 1875 (38 & 39 Vict. c. 22), of which see s. 14.

7 & 8 Vict. c. 69[1]: Appeals to Judicial Committee of Privy Council. Sections 2–7, 13, not affecting appeals from colonies, repealed; in s. 12 the words "from Admiralty and Vice-Admiralty Courts," and so much as relates to maritime courts, repealed.

10 & 11 Vict. c. 95: Colonial Copyright Act; protection in colonies of works entitled to copyright in United Kingdom. Section 3 repealed. See 49 & 50 Vict. c. 33, ss. 8, 9.

12 & 13 Vict. c. 66: To enable colonial legislatures to establish inland posts. Sections 5, 7 repealed.

12 & 13 Vict. c. 96:[2] Admiralty Offences (Colonial) Act, 1849. Prosecution and trial within colonies of offences committed within the jurisdiction of the Admiralty. Sections 2, 5 from "and the word Governor" to end, 6, repealed.

14 & 15 Vict. c. 83; ss. 16, last half of, 18, as to amount of Master of Rolls' salary; Judicial Committee of Privy Council.

1 *Harrison* v. *Scott*, 5 Moo. P. C. C. 357; *A.-G. of Jamaica* v. *Manderson*, 6 Moo. P. C. C. 239; *In re Barnett*, 4 Moo. P.C. C. 453; *Hitchins* v. *Hollingsworth*, 7 Moo. P. C. C. 228.

2 *Reg.* v. *Mount*, L. R. 6 P. C. 283. See this case as to application to the colonies of 20 & 21 Vict. c. 3, abolishing transportation.

14 & 15 Vict. c. 99, ss. 7, 11 :[1] Proof of colonial proclamations, treaties, Acts of State, judgments, &c. and other judicial proceedings, and legal documents.

15 & 16 Vict. c. 39 : Crown Revenues (Colonies) Act, 1852. Sale moneys of lands in colonies, appropriation of.

15 & 16 Vict. c. 52 : Colonial bishops acting in England. Extended by 16 & 17 Vict. c. 49, and amended by 37 & 38 Vict. c. 77, ss. 8, 13.

15 & 16 Vict. c. 12 : International Copyright. Ss. 1–5, 8, 11, 12, 13, repealed. S. 6 not to apply to dramatic pieces in certain cases (38 & 39 Vict. c. 12).

16 & 17 Vict. c. 48 : Coinage (Colonial Offences) Act, 1853. Punishment of coin offences in colonies except where other provision made by colonial Acts; power to make such provision. Preamble "and" to "authority of same, as follows"; s. 2, "at the discretion of the court," and from "or of any term" to the end; repealed.

16 & 17 Vict. c. 49 : Colonial bishops acting in colonial dioceses other than their own.

16 & 17 Vict. c. 107, ss. 165, 166, 181–183, 185, 187, 188 : Regulations as to customs; so far as they relate to those of His Majesty's possessions abroad in which other provisions have not been substituted by local Act or Ordinance with the sanction of His Majesty; ss. 327, 330, 331 : Regulations as to import and export and trade in certain colonies.

19 & 20 Vict. c. 113 : Foreign Tribunals Evidence Act, 1856. Taking evidence as to civil and commercial matters pending before foreign tribunals. Extended to non-political criminal matters pending in foreign courts by 33 & 34 Vict. c. 52 (Extradition), s. 24. Section 6, from "provided" to the end, repealed.

[1] *Baillie* v. *Jackson*, 3 De G. M. & G. 38; 22 L. J. Ch. 753, *Leishman* v. *Cochrane*, 1 Moo. P. C. C., N. S., 315; *Clarke* v. *Emery*, 1 F. & F. 446. See *Appleton* v. *Lord Braybrooke*, 6 M. & S. 34; *Buchanan* v. *Rucker*, 9 East, 192.

20 & 21 Vict. c. 3: Abolition of transportation.[1] Sections 1, 7, 8, repealed; s. 2 from "provided always"; s. 3 to "other cases," and the words "now or hereafter"; also in s. 4 the words "or chief governor or governors."

21 & 22 Vict. c. 90, s. 46: Medical practitioners in the colonies. Verbally amended by 55 & 56 Vict. c. 19.

22 Vict. c. 20: Taking evidence in the United Kingdom or the colonies for purposes of any court or tribunal in His Majesty's dominions.[2] Amended by 48 & 49 Vict. c. 74.

22 Vict. c. 25: Government of convict prisons in His Majesty's dominions abroad. Section 1 repealed.

22 & 23 Vict. c. 12: Colonial Affidavits Act, 1859. Authorising repeal by colonial legislatures of 54 Geo. 3, c. 15, ss. 1–3, and 5 & 6 Will. 4, c. 62. ss. 15, 17. Section 1 repealed.

22 & 23 Vict. c. 63: British Law Ascertainment Act, 1859. To afford facilities for ascertaining the law administered in one part of His Majesty's dominions when pleaded in the courts of another part thereof.[3]

23 & 24 Vict. c. 122: Admiralty offences (colonial) Act; enabling colonial legislatures to make enactments as to the trial and punishment of offences in respect of persons, who, being feloniously stricken, poisoned, or otherwise hurt within any of His Majesty's possessions abroad, die thereof on the sea or beyond the limits of such possession, within the possession within which such stroke, poisoning, or hurt happened.

24 & 25 Vict. c. 11: Foreign Law Ascertainment Act, 1861. Power to any Superior Court in His

[1] As to where applicable to colonies, see *Reg.* v. *Mount*, L. R. 6 P. C. 283.

[2] *Campbell* v. *Attorney-General*, L. R. 2 Ch. App. 571; *Bullivant* v. *A.-G. for Victoria*, L. R. (1901) A. C. 196; 70 L. J. K. B. 645.

[3] *Lord* v. *Colvin*, 29 L. J Ch. 297; 1 Drew. & Sm. 24.

Majesty's dominions to send case for opinion of a Superior Court in foreign State with which His Majesty has convention for the purpose; reciprocal power of foreign State.[1]

25 Vict. c. 20: Prohibition of issue of writ of *habeas corpus* into any colony having a court authorised to grant the same.[2]

26 & 27 Vict. c. 76: Colonial Letters Patent Act, 1863. Time at which Letters Patent are to take effect, in the colonies. Ss. 4 and 5 repealed.

26 & 27 Vict. c. 84: Confirming Constitution Acts of colonial legislatures.

27 & 28 Vict. c. 25: Naval Prize Act, 1864. Ss. 13, 51, 56, repealed.

28 & 29 Vict. 14: Colonial naval defence; s. 2 repealed in part.

28 & 29 Vict c. 63: Validity of colonial laws.[3]

28 & 29 Vict. c. 64: Establishing validity of colonial marriage laws.

28 & 29 Vict. c. 106: Loans for construction of colonial docks. S. 15 repealed.

28 & 29 Vict. c. 113: Colonial Governors (Pensions) Act, 1865. Retiring pensions to colonial Governors. Repealed in part. Amended by 35 & 36 Vict. c. 29 and 50 & 51 Vict. c. 13.

31 & 32 Vict. c. 37: Documentary evidence. S. 4 from "for such term" repealed. Amended by 45 & 46 Vict. c. 9.

32 Vict. c. 10: Removal of prisoners from one colony to another for purpose of punishment. Ss. 3, 8, repealed; and see *post*, 47 & 48 Vict. c. 31.

33 & 34 Vict. c. 10, s, 11: Coinage.

33 & 34 Vict. c. 14, s. 16: Power of colonies to

[1] No convention has been entered into under this Act.

[2] Passed in consequence of the decision *In the matter of John Anderson*, 3 E. & B. 487; 30 L. J. Q. B. 129.

[3] *L'Union de S. Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31 (s. 5); *Bank of Australasia* v. Nias, 16 Q. B. 717; 20 L. J. Q. B. 284 (s. 3); *Reg.* v. *Marais, ex parte Marais*, L. R. (1902) A. C. 51; 71 L. J. P. C. 32 (s. 5); *Fielding* v. *Thomas*, L. R. (1896) A. C. 600.

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legislate as to naturalisation: ss. 3, 6 (2), declaration of alienage, how made in colonies; s. 8, jurisdiction of Governors as to readmission of statutory aliens to British nationality.

33 & 34 Vict. c. 52, ss. 17, 18: Extradition of criminals; s. 24, evidence on non-political matters pending in foreign courts. Amended by 36 & 37 Vict. c. 60 and 58 & 59 Vict. c. 33.

33 & 34 Vict. c. 90: Foreign enlistment. S. 31 repealed.

34 & 35 Vict. c. 49, ss. 18, 19: Affidavits in Court for Matrimonial Causes, Ireland; penalties.

35 & 36 Vict. c. 29: Amendment of Colonial Governors Pensions Act, 1865. Amended by 39 & 40 Vict. c. 43, 50 & 51 Vict. c. 13.

35 & 36 Vict. c. 44, s. 25: Provision as to certain slave compensation funds standing in the name of the Accountant-General; reversion to the public of. Repealed to "surplus of the annual revenue."

36 & 37 Vict. c. 60, ss. 3, 7: Extradition.

36 & 37 Vict. c. 88: Suppression of slave trade; action of colonial authorities and courts as to. Ss. 20 and 23 partially repealed by 53 & 54 Vict. c. 27, s, 18; s. 30 and 2nd sched. repealed.

37 & 38 Vict. c. 27: Regulating sentences of colonial Courts when jurisdiction to try given by Imperial Acts.[1]

37 & 38 Vict. c. 77: Colonial clergy. Ss. 2, 10, and schedules, repealed. In s. 7 "the Governor of" repealed.

37 & 38 Vict. c. 94, s. 51: Probate of will issued in colony equivalent to will for completing title to land in Scotland.

38 & 39 Vict. c. 22, ss. 8, 9: Post office.

39 & 40 Vict. c. 36, s. 149: Powers of commissioners as to customs, &c., vested in Governors, &c., of

[1] Passed in consequence of decision in *Reg.* v. *Mount*, L. R. 6 P. C. 283.

colonies; ss. 151, 161, Customs Acts to extend to colonies except where otherwise provided, or where provision for management of customs made by local Ordinance or Act; colonial laws, &c., repugnant to Customs Acts, to be void; s. 153, forfeiture of goods of foreign manufacture imported into colonies if bearing names or brands of manufacturers resident in the United Kingdom.

40 & 41 Vict. c. 23: Transferring to Governor of colony fortifications held in trust for defence of colony. Section 1 the words "Commissioners of Her Majesty's," repealed.

40 & 41 Vict. c. 57, s. 74: Affidavits, &c., in Supreme Court of Judicature, Ireland.

40 & 41 Vict. c. 59: Colonial Stock. Ss. 2, 3 (1), 12 except as to Scotland, 26 from "the Act of the Session," repealed. Amended by 55 & 56 Vict. c. 35. As to s. 19 see 63 & 64 Vict. c. 62, s. 1, and 3 Edw. 7, c. 27, s. 1 (3)

41 & 42 Vict. c. 33: Dentists Act. Amended by 49 & 50 Vict. c. 48, ss. 23, 26.

44 & 45 Vict. c. 3: Judicial Committee Act, 1881. Ex-Lords Justices of Appeal to be members of.

41 & 42 Vict. c. 73: Territorial Waters Jurisdiction Act; regulating proceedings relating to trial of offences committed at sea within a certain distance of the coast of His Majesty's dominions.

44 & 45 Vict. c. 58, ss. 54 (4, 7, 9), 94, 122 (6), 131 (1), 132, 154 (4, 6), 168, 169, 177, 189 (2, 3, 4): The army in the colonies,

44 & 45 Vict. c. 69:[1] Fugitive Offenders Act. Ss. 40, 41, sched. repealed.

45 & 46 Vict. c. 9: Documentary Evidence Act, 1882.

46 & 47 Vict. c. 30: Companies registered under Companies Act, 1862, authorised to keep local registries of their members in British colonies. S. 3 (7)

[1] See *Reg.* v. *Phillips*, 1 F. & F. 105.

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amended by 52 & 53 Vict. c. 42, s. 18, where called s. 7.

46 & 47 Vict. c. 52, s. 118 : Bankruptcy courts to be auxiliary to each other ;[1] s. 168, land situate in England or elsewhere to pass to trustee.[2]

46 & 47 Vict. c. 57, ss. 103, 104 : Patents.[3]

46 & 47 Vict. c. 58, s. 4 : Extension of 43 & 44 Vict. c. 33, respecting money orders to British possessions.

47 & 48 Vict. c. 31 : Colonial prisoners removal (in effect authorising intercolonial transportation).[4] Preamble, s. 11, Commissioners of Her Majesty, s. 18, definition of Secretary of State, repealed.

48 & 49 Vict. c. 74 : Amendment of law relative to taking evidence in India and the colonies and elsewhere in Her Majesty's dominions.

49 & 50 Vict. c. 33, ss. 8, 9 : Copyright in colonies. And see 10 & 11 Vict. c. 95, *ante*.

49 & 50 Vict. c. 48 : Medical Act, Part II. Registration of colonial practitioners, &c.[5]

50 & 51 Vict. c. 13 : Pensions (colonial service); application of Superannuation Acts to colonial civil service ; s. 5 applies colonial Governors (Pensions) Acts, 1865 and 1872, to High Commissioner in Cyprus.

50 & 51 Vict. c. 54 : Government of British settlements in places where there is no civilised government.

50 & 51 Vict. c. 70, ss. 3, 4 : Amending constitution

[1] *Cf. In re Levy's Trusts*, L. R. 30 Ch. D. 119.

[2] *Cf. Callender, Sykes & Co.* v. *Colonial Secretary of Lagos*, L. R. (1891) A. C. 460.

[3] Applied by Orders in Council to New Zealand (Feb. 8, 1890), Queensland (Sept. 17, 1885), Tasmania (April 30, 1894), Western Australia (May 11, 1895).

[4] An Order in Council, dated December 13, 1889, has been issued making regulations for the removal and return of prisoners and criminal lunatics under this Act ; also one, dated October 17, 1884, applying it to Cyprus.

[5] Orders in Council have been made under s. 17 of the Act applying Part II to the following colonies : New Zealand (March 25, 1887), Ceylon (December 29, 1887), New South Wales (March 21, 1890), Victoria (March 21, 1890), South Australia (February 21, 1891), Malta (Sept. 26, 1901).

and providing for remuneration of Judicial Committee of Privy Council.

52 & 53 Vict. c. 10 : For amending and consolidating enactments relating to the administration of oaths; see especially s. 3.[1] Amended by 53 & 54 Vict. c. 7; explained and s. 6 amended by 54 & 55 Vict. c. 50.

52 & 53 Vict. c. 52 : Official Secrets.

53 & 54 Vict. c. 25 : Barracks. Sections 2, 3, 4, repealed.

53 & 54 Vict. c. 27 :[2] Colonial Courts of Admiralty Act, 1890.

53 & 54 Vict. c. 37, s. 6 : Power to British authorities in foreign countries to send for trial to British possessions persons charged with offences cognisable by British Courts in such foreign countries; power to Courts in British possessions to try and punish such persons; s. 9 : Power to Queen in Council to assign same jurisdiction to Courts in British possessions as to British Courts in foreign countries.[3]

54 & 55 Vict. c. 31, ss. 3, 8 : Mail Ships Act, 1891; application of to British possessions. Section 3 (2) changed, (5) amended by 2 Edw. 7, c. 36, s. 1.

54 & 55 Vict. c. 43, s. 5 : Forged Transfers Act, 1891; application of to colonial stock.

55 Vict. c. 6 : Providing for the recognition in the United Kingdom of probates and letters of administration granted in British possessions.[4]

[1] The following cases were decided under 15 & 16 Vict. c. 86, ss. 22–24 : *Re Goss's Estate*, 12 Jur. N. S. 595 ; *Crofts* v. *Middleton*, 9 Hare, App. xviii., lxiv. ; *Baillie* v. *Jackson*, 3 De G. M. & G. 38, 22 L. J. Ch. 753 ; *Bateman* v. *Cooke*, 3 De G. M. & G. 39. 22 L. J. Ch. 744 ; *Sleight* v. *Lawson*, 26 L. J. Ch. 553, 3 K. and J. 292 ; *Armstrong* v. *Stockham*, 24 L. J. Ch. 176.

[2] *Vide Casanova* v. *Reg.*, 3 Moo. P. C. C., N. S., 484 (under the old Act). See s. 16 and 1st sched. as to delay of operation of Act in New South Wales, Victoria, St. Helena, British Honduras.

[3] The Order in Council of 23 October, 1877, giving the Supreme Court of Hong Kong jurisdiction in any place on land in China within ten miles of any part of the colony, &c., was issued under 29 & 30 Vict. c. 87, of which this is a re-enactment.

[4] In the goods of *W. Smith the younger*, L. R. (1894) P. 114. In the goods of *Sanders*, L. R. (1900) P. 292.

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Imperial Statutes relating to the colonies in general.

55 & 56 Vict. c. 23: Marriage of British subjects outside the United Kingdom.

55 & 56 Vict. c. 35: Colonial stock. Amended by 63 & 64 Vict. c. 62.

56 Vict. c. 5: Regimental Debts Act, 1893.

56 Vict. c. 7, s. 4: Repeal of annual duties in respect of colonial share certificates.

57 & 58 Vict. c. 30, s. 20: Finance Act. Property in British possessions paying duty in British possessions excepted.

57 & 58 Vict. c. 17: Colonial officers, leave of absence. Repealing 54 Geo. 3, c. 61.

57 & 58 Vict. c. 39, s. 2, sub-s. 3: Colonial Courts of Admiralty; authorisation to act as Prize Courts; s. 3, sub-s. 4, fees.

58 & 59 Vict. c. 34: Colonial boundaries, providing for alteration of.

57 & 58 Vict. c. 60: Merchant Shipping; Part I.; Part II. s. 261, and so far as applied or adapted by the legislature of a British possession (s. 264); Part III. as defined and limited in s. 365; ss. 366, 367, 444, 457 (3), 472, 478; Part VIII. ss. 558, 670–5, 690(3*b*), 691, 699. Part XIII.

58 & 59 Vict. c. 44: Judicial Committee of Privy Council Amendment; provisions as to persons having been Colonial Chief Justices or Judges. See Schedule.

61 & 62 Vict. c. 44, s. 2: Colonial lighthouses; dues transferred to General Lighthouse Fund.

62 & 63 Vict. c. 9, s. 4; Stamp duty on colonial instruments transferable by delivery on which duty not now payable.

63 & 64 Vict. c. 14: Admission of Solicitors of Courts of British possessions to the Supreme Courts in United Kingdom.

63 & 64 Vict. c. 62: Amendment of Colonial Stock Acts, 1877 and 1892, and Trustee Act, 1893.

1 Edw. 7, c. 5: Demise of Crown; holding of any

office whether within or without His Majesty's dominions not affected, fresh appointment not necessary.

1 Edw. 7, c. 15: Royal Titles.

4 Edw. 7, c. 7, s. 3: Finance Act. Relief from income-tax on insurances with colonial company or deferred annuities.

4 Edw. 7, c. 8, s. 12: Savings Banks Act. Transfer of deposits from or to colonial savings banks.

5 Edw. 7, c. 14: Medical Act, 1886, Amendment Act. Any part of a British possession under a central and also under a local legislature His Majesty may by Order in Council declare to be a separate British possession for purposes of the Medical Act, 1886.

5 Edw. 7, c. 15, s. 65: Application of ss. 103, 104 of 46 & 47 Vict. c. 57, as amended by 48 & 49 Vict. c. 63 (Patents, Designs and Trade Marks Acts).

Section 2.

Subjects of Imperial Legislation relating to the Colonies in general.

Abroad, offences committed by persons in His Majesty's service, trial and punishment of in Great Britain: 11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85.

Admiralty offences, trial and punishment of: 46 Geo, 3, c. 54; 12 & 13 Vict. c. 96; 23 & 24 Vict. c. 122.

Admiralty, colonial courts of: 53 & 54 Vict. c. 27; 57 & 58 Vict. c. 39, s. 2, sub-s. 3; authorisation to act as Prize Courts; s. 3, sub-s. 4, fees.

Affidavits, &c., in Court for Matrimonial Causes, Ireland: 34 & 35 Vict. c. 49, ss. 18, 19.

Affidavits (Colonial): 22 & 23 Vict. c. 12.

Affidavits, &c., in Supreme Court of Judicature, Ireland: 40 & 41 Vict. c. 57, s. 74.

Army, the, in the colonies: 44 & 45 Vict. c. 58, ss. 54 (4, 7, 9), 94, 122 (6), 131 (1), 132, 154 (4, 6), 168, 169, 177, 189 (2, 3, 4).

Ascertainment of law of one part of Her Majesty's dominions for the purpose of trials in other parts: 22 & 23 Vict. c. 63.

Ascertainment of law of foreign State; reciprocal power to foreign State: 24 & 25 Vict. c. 11.

Bankruptcy Courts to be auxiliary to each other; land to pass to trustee: 46 & 47 Vict. c. 52, ss. 118, 168.

Barracks: 53 & 54 Vict. c. 25.

Bishops, colonial, acting in England: 15 & 16 Vict. c, 52; 16 & 17 Vict. c. 49; 37 & 38 Vict. c. 77, ss. 8, 13.

Boundaries, colonial, providing for alteration of: 58 & 59 Vict. c. 34.

British settlements in uncivilised places, government of: 50 & 51 Vict. c. 54.

Coinage: 33 & 34 Vict. c. 10, s. 11.

Coin offences, punishment of: 16 & 17 Vict. c. 48.

Colonial clergy: 37 & 38 Vict. c 77 (ss. 2, 10, and schedd. repealed.)

Colonial Courts of Admiralty: 53 & 54 Vict. c. 27.

Colonial Courts, sentences of; 37 & 38 Vict. c. 27.

Colonial Courts, jurisdiction of under Foreign Jurisdiction Act: 53 & 54 Vict. c. 3, s. 9.

Colonial Courts of inquiry under Merchant Shipping Act, 1894: 57 & 58 Vict. c. 60.

Colonial laws validity of: 28 & 29 Vict. cc. 63, 64.

Colonial officers, leave of absence: 22 Geo. 3, c. 75, ss. 2–4; 57 & 58 Vict. c. 17.

Colonial prisoners removal: 32 Vict. c. 10 (ss. 3, 8, repealed); 47 and 48 Vict. c. 31.

Colonial share certificates, repeal of annual duties on: 56 Vict. c. 7, s. 4.

Colonial stock: 40 & 41 Vict. c. 59, amended by 55 & 56 Vict. c. 35; 63 and 64 Vict. c. 62.

Companies, local registers of members of in British colonies: 46 and 47 Vict. c. 30; 52 & 53 Vict. c. 42, s. 18.

Constitution Acts, confirmation of: 26 & 27 Vict. c. 84.

Convict prisons, government of: 22 Vict. c. 25 (s. 1 repealed).

Convicts, pardon of transported: 6 & 7 Vict. c. 7 (preamble and ss. 1, 6, repealed).

Convicts, protection of pardoned in enjoyment of property acquired since conviction: 5 Geo. 4, c. 84, s. 26.

Copyright, protection of in colonies: 5 & 6 Vict. c. 45; 10 & 11 Vict. c. 95; 49 & 50 Vict. c. 33, ss. 8, 9; International; 7 & 8 Vict. c. 12; 15 & 16 Vict. c. 12.

Crown Revenues (Colonies): 15 & 16 Vict. c. 39.

Customs, powers of Governors as to: 39 & 40 Vict. c. 36, s. 149.

Customs regulations: 16 & 17 Vict. c. 107, ss. 165, 166, 182, 183, 188, 327, 330, 331; 39 & 40 Vict. c. 36, ss. 151, 153, 161.

Demise of Crown: 1 Edw. 7, c. 5.

Dentists: 41 & 42 Vict. c. 33; 49 & 50 Vict. c. 48, ss. 23, 26.

Docks, loans for construction of: 28 & 29 Vict. c. 106.

Evidence, admission of barbarous and uncivilised persons in colonial Courts: 6 & 7 Vict. c. 22.

Evidence, taking of in relation to civil and commercial matters pending before foreign tribunals: 19 & 20 Vict. c. 113 (s. 6 from "provided" to end repealed). Extended to non-political criminal matters, 33 and 34 Vict. c. 52, s. 24.

Evidence, proof of certain public documents and proceedings: 14 and 15 Vict. c. 99, ss. 7, 11; 31 & 32 Vict. c. 37; 45 & 46 Vict. c. 9.

Evidence, taken of for purposes of any court or

tribunal in Her Majesty's dominions: 22 Vict. c. 20. Amended as to costs by 48 and 49 Vict. c. 74, s. 5.

Evidence, taking of in India and the colonies, &c.: 1 Will. 4, c. 22 (ss. 3–5, 8–11, repealed); 48 & 49 Vict. c. 74.

Extradition: 33 & 34 Vict. c. 52, ss. 17, 18; 36 & 37 Vict. c. 60, ss. 3, 7.

Foreign enlistment: 33 & 34 Vict. c. 90 (s. 31 repealed).

Foreign Jurisdiction: 53 & 54 Vict. c. 37.

Forged Transfers Act, 1891; application of to colonial stock: 54 & 55 Vict. c. 37.

Fortifications transferred to Governors: 40 & 41 Vict. c. 23.

Fugitive offenders: 44 & 45 Vict. c. 69.

Governors, incapacitated from being elected to, or of sitting or voting in, House of Commons: 6 Ann. c. 4 (Ruff. 7), s. 25.

Governors, responsibility of in Great Britain for offences committed abroad: 11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85.

Governors, prolonging duration of patents of after demise of the Crown: 1 Will. 4, c. 4, s. 2.

Governors, powers of as to passenger ships: 57 & 58 Vict. c. 60, s. 366.

Governors, retiring pensions to: 28 & 29 Vict. c. 113; 35 & 36 Vict. c. 29; 50 & 51 Vict. c. 13.

Governors, regulation by as to anti-scorbutics on board ships: 57 & 58 Vict. c. 60, s. 205.

Governors, regulations by as to terminal certificates of registry of certain ships: 57 & 58 Vict. c. 60, s. 90.

Governors, appointment by of surveyors of emigrant ships: 57 & 58 Vict. c. 60, s. 366.

Governors, jurisdiction of as to readmission to British nationality: 33 & 34 Vict. c. 14, s. 8.

Governors, powers of under Extradition Acts: 33 & 34 Vict. c. 52, s. 17; 36 & 37 Vict. c. 60, s. 1.

Governors, powers of as to customs : 39 & 40 Vict. c. 36, s. 149 ; 57 & 58 Vict. c. 60, s. 89.

Governors, transfer of fortifications to : 40 & 41 Vict. c. 23.

Governors, leave of necessary for institution of proceedings against persons not British subjects for offences under Territorial Waters Jurisdiction Act : 41 & 42 Vict. c. 73, ss. 3, 4.

Governors, duties of as to court-martial : 44 & 45 Vict. c. 58, s. 54, sub-ss. 4, 7, 9.

Governors, powers of as to attesting soldiers : ibid. s. 94, sub-s. 1.

Governors, duty of to arrange for reception of military prisoners : ibid. ss. 131, 132.

Governors, powers of to proclaim force in colony temporarily subject to Army Act : ibid. s. 89, sub-ss. 2, 3, 4.

Governors, powers of under Fugitive Offenders Act : 44 & 45 Vict. c. 69, ss. 3, 6.

Governors, powers of to approve ports of registry, 57 & 58 Vict. c. 60, s. 84.

Governors, powers of to appoint *ad interim* certain officials in Vice-Admiralty Courts : 53 & 54 Vict. c. 27, s. 9 (2*b*).

Habeas corpus, prohibition of issue of writ of to certain colonies : 25 Vict. c. 20.

Insurances with colonial companies, relief from income tax : 4 Edw. 7, c. 7, s. 3.

Judicial Committee of the Privy Council, constitution of, &c. : 3 & 4 Will. 4, c. 41 ; 6 & 7 Vict. c. 38 ; 7 & 8 Vict. c. 69 ; 14 & 15 Vict. c. 83 ; 20 & 21 Vict. c. 77, s. 115 ; 37 & 38 Vict. c. 35, sched. as to 3 & 4 Will. 4, c. 41 ; 39 & 40 Vict. c. 59, ss. 6, 14 ; 44 Vict, c. 3 ; 50 & 51 Vict. c. 70, s. 3 ; 58 & 59 Vict. c. 44.

Jurisdiction of colonial courts under Foreign Jurisdiction Act : 53 & 54 Vict. c. 37, s. 9.

Leave of absence of colonial officers : 57 & 58 Vict. c. 17.

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Sect. 2.

Subjects of Imperial Legislation relating to the colonies in general.

Letters patent, time of taking effect of: 26 & 27 Vict. c. 76.

Lighthouses (colonial), erection and maintenance of: 61 & 62 Vict. c. 44, s 2; dues transferred to general lighthouse fund.

Load-lines on ships registered in British possessions: 53 Vict. c. 9, s. 3.

Loans, colonial: 62 & 63 Vict. c. 36.

Loans for construction of docks: 28 & 29 Vict. c. 106.

Mail Ships Act, 1891, application of to British possessions: 54 & 55 Vict. c. 31, s. 8.

Marriage laws (colonial), validity of: 28 & 29 Vict. c. 64.

Marriage of British subjects outside United Kingdom: 55 & 56 Vict. c. 23.

Medical Act Amendment: 5 Edw. 7, c. 14.

Medical practitioners: 21 & 22 Vict. c. 90, s. 46; 49 & 50 Vict. c. 48.

Merchant shipping. See Shipping.

Money orders: 46 & 47 Vict. c. 58, s. 4.

Naturalisation, power to legislate as to: 33 & 34 Vict. c. 14, s. 16; declarations in colonies of alienage and of British nationality, ss. 3, 6 (2); readmission to British nationality, s. 8.

Naval defence: 28 & 29 Vict. c. 14.

Naval Prize: 27 & 28 Vict. c. 25.

Oaths, administration of: 52 Vict. c. 10.

Offences at sea, trial of: 46 Geo. 3, c. 54.

Offices in colonies: 22 Geo. 3, c. 75, ss. 2–4.

Officials, colonial, responsibility of in Great Britain for offences committed abroad in their offices: 11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85.

Official Secrets: 52 & 53 Vict. c. 52.

Ordination for colonies: 59 Geo. 3, c. 60.

Pardon of transported convicts: 6 & 7 Vict. c. 7.

Patent, Letters, time of taking effect of: 26 & 27 Vict. c. 76.

Patent, Letters: 46 & 47 Vict. c. 57, ss. 103, 104.

Patents, designs, and trade-marks: 46 & 47 Vict. c. 57, ss. 103, 104; 5 Edw. 7, c. 15, s. 65.

Pensions, colonial service: 28 & 29 Vict. c. 113; 35 & 36 Vict. c. 29; 50 & 51 Vict. c. 13.

Posts and postage: 7 & 8 Vict. c. 49; 12 & 13 Vict. c. 66; 38 & 39 Vict. c. 22, ss. 8, 9.

Prisoners, removal of from one colony to another for punishment: 32 Vict. c. 10; 47 & 48 Vict. c. 31.

Probates and letters of administration, colonial, recognition of in United Kingdom: 55 Vict. c. 6.

Probate of will issued in colony equivalent to will for completing title to land in Scotland: 37 & 38 Vict. c. 94, s. 51.

Proof of colonial proceedings: 14 & 15 Vict. c. 99, ss. 7, 11.

Property in British possessions paying duty in British possessions, exception of from Finance Act; 57 & 58 Vict. c. 30, s. 20.

Regimental debts: 56 Vict. c. 5.

Remission of sentence by Governor, protection of felons receiving in enjoyment of property acquired after conviction: 5 Geo. 4, c. 84, s. 26.

Repeal by colonial legislatures of certain parts of 54 Geo. 3, c. 15, and 5 & 6 Will. 4, c. 62: 22 & 23 Vict. c. 12. S. 1 repealed.

Royal titles; 1 Edw. 7, c. 15.

Sale moneys of lands, appropriation of: 15 & 16 Vict. c. 39.

Saving Banks, colonial, transfer of deposits to or from: 4 Edw. 7, c. 8, s. 12.

Scotland, land in, probate of will issued in colonies equivalent to will for completing title to: 37 & 38 Vict. c. 94, s. 51.

Sea, trial in colonies of offences committed at: 46 Geo. 3, c. 54; 12 & 13 Vict. c. 96.

Sentences of colonial courts, regulation of in certain cases: 37 & 38 Vict. c. 27.

Share certificate, colonial; repeal of annual duties in respect of: 56 Vict. c. 7, s. 4.

Shipping, merchant (colonial): 57 & 58 Vict. c. 60, Part I., Part II., s. 261, and so far as applied or adapted by colonial legislature (s. 264), Part III. as defined and limited in s. 365, ss. 366, 367, 444, 457 (3), 472, 478, Part VIII., ss. 558, 670–5, 690 (3*b*), 691, 699.

Slavery, abolition of: 3 & 4 Will. 4, c. 73, s. 12; 6 & 7 Vict. c. 98, s. 2.

Slave compensation funds, reversion to public of certain: 35 & 36 Vict. c. 44, s. 25.

Slave trade, suppression of: 5 Geo. 4, c. 113, ss. 2–8, 9, 12, 39, 40, 47; 6 & 7 Vict. c. 98; 36 & 37 Vict. c. 88.

Solicitors, admission of colonial to courts of United Kingdom: 63 & 64 Vict. c. 14.

Stamp duty, exemption from of certain instruments and contracts; colonial instruments transferable by delivery not now dutiable: 62 & 63 Vict. c. 9, s. 4.

Stock, colonial: 40 & 41 Vict. c. 59, amended by 55 & 56 Vict. c. 35; 43 & 44 Vict. c. 20, s. 54; 63 & 64 Vict. c. 62.

Taxation of colonies, renunciation of: 18 Geo. 3, c. 12.

Territorial Waters Jurisdiction Act: 41 & 42 Vict. c. 73.

Ticket of leave men, holding of property by: 6 & 7 Vict. c. 7 (preamble and ss. 1, 6, repealed).

Trade Marks: 46 & 47 Vict. c. 57, ss. 103, 104; 5 Edw. c. 15, s. 65.

Transportation: 6 Geo. 4, c. 69.

Transportation, abolition of: 20 & 21 Vict. c. 3. Ss. 1, 7, 8, repealed.

Trial and punishment in colonies of persons charged with offences cognisable by British Courts sitting in foreign countries: 53 & 54 Vict. c. 37, s. 6.

Validity of colonial laws: 28 & 29 Vict. cc. 63, 64.

Witnesses, *mandamus* to colonial judges to examine: 1 Will. 4, c. 22. Ss. 3–5, 8–11, repealed.

Section 3.

Imperial Statutes relating to particular Colonies.

AFRICA, COAST OF.—1 & 2 Geo. 4, c. 28; West Africa Act, 1821: Possessions of African Co. vested in the Crown and annexed to Sierra Leone. Preamble, ss. 1 to "on the said coast; and," 2, 4, repealed.

21 & 22 Vict. c. 35: Confirming convention with the French as to Portendic and Albreda.

AFRICA, SOUTH.—26 & 27 Vict. c. 35; South Africa offences: Prevention and punishment of offences by His Majesty's subjects in parts of S. Africa not within jurisdiction of any civilised government. S. 6 repealed. Provision for repeal or variation of by Order in Council, 53 & 54 Vict. c. 37, s. 17.

40 & 41 Vict. c. 47, s. 58: Power of H.M. to authorise annexation to Cape of Good Hope of certain territories.

TRANSVAAL.—3 Edw. 7, c. 27: South African loan and war contribution.

ORANGE RIVER COLONY.—3 Edw. 7, c. 27: South African loan and war contribution.

AFRICA, WEST.—1 & 2 Geo. 4, c. 28; West Africa Act, 1821: Possessions of African Co. vested in the Crown and annexed to Sierra Leone. Ss. 2, 4, repealed.

16 & 17 Vict. c. 86: Rights of liberated Africans in Sierra Leone; to be deemed natural-born subjects.

24 & 25 Vict. c. 31: Prevention and punishment of offences in territories adjacent to Sierra Leone. Provision for repeal or variation of by Order in Council, 53 & 54 Vict. c. 37, s. 17.

34 Vict. c. 8; West Africa Offences Act, 1871: Extending jurisdiction of Courts to offences committed out of Her Majesty's dominions.

62 & 63 Vict. c. 43: Royal Niger Co.; payments on revocation of Charter on transfer to Crown.

GAMBIA.—4 Edw. 7, c. 33: Rectification of Frontier; Sched. Anglo-French Convention; Iles de Los, cession of to France; Niger Basin, delimitation of English and French possessions in.

BASUTOLAND AND BRITISH BECHUANALAND. — 52 & 53 Vict. c. 38: Validity of certain marriages solemnised in.

CAPE OF GOOD HOPE.—26 & 27 Vict. c. 35: Extending laws for punishment of crime to British subjects in parts of S. Africa not within jurisdiction of civilised government; appointment of magistrates in such territory. S. 6 repealed.

40 & 41 Vict. c. 47, s. 58: Power of H.M. to authorise annexation to the Colony of certain territories after the Legislature of the Colony has passed a law providing that such territories shall become part of the Colony.

GOLD COAST.—62 & 63 Vict. c. 36: Colonial Loans.

LAGOS.—62 & 63 Vict. c. 36: Colonial Loans.

NIGER COAST PROTECTORATE.—62 & 63 Vict. c. 36: Colonial Loans.

SIERRA LEONE.—62 & 63 Vict. c. 36: Colonial Loans.

AMERICA, COLONIES IN.—25 Geo. 2, c. 6: Wills excepted from repeal in 1 Vict. c. 26, s. 2.

6 Geo. 3, c. 12: Authority of H.M. over.

18 Geo. 3, c. 12: Taxation of Colonies Act, 1778. S. 2 repealed.

59 Geo. 3, c. 38: The N. American Fisheries Act, 1819.

AMERICA, NORTH, BRITISH POSSESSIONS IN.—39 & 40 Vict. c. 36, s. 150: Base coin not to be imported into.

AMERICA, NORTH-WESTERN TERRITORIES OF.—22 & 23 Vict. c. 26: Administration of justice; regulation of trade with Indians.

BRITISH COLUMBIA.—22 & 23 Vict. c 26: Jurisdiction of Courts over offences committed in Indian territory.

29 & 30 Vict. c. 67 : Union with Vancouver's Island. Ss. 2–6, 9, sched., repealed ; ss. 7, 8, repealed in part.

55 & 56 Vict. c. 52 : British Columbia Loan.

CANADA.—14 Geo. 3, c. 83 ;[1] British N. America (Quebec) Act, 1774: Defining province of Quebec. Repealed as to ss. 3, 4, 6, 7, 11 (from "subject" to end), 12–17.

31 Geo. 3, c. 31, ss. 38–40, 43–45 ; Clergy Endowments (Canada) Act, 1791 : Parsonages; grants of lands.

1 & 2 Geo. 4, c. 66 ; British N. America Act, 1821 : Trade with Indians; administration of justice in Indian territories. Ss. 1 to "passing of this Act," 3 to "passing of this Act," 4, 5, 6 to "passing of this Act," and 6–13 so far as relating to Vancouver's Island and British Columbia, repealed.

3 Geo. 4, c. 119 ; British N. America (Trade and Lands) Act, 1822, ss. 31 (from and after the words "declared that" and except the words "from and after the commencement of this Act"), 32 : Tenure of lands.

6 Geo. 4, c. 59,[2] s. 9 to the words "none other" : Addition of parts of Labrador, &c., to Lower Canada.

6 Geo. 4, c. 75 : Canada Co.

9 Geo. 4, c. 51 : Canada Co.

3 & 4 Vict. c. 35, ss. 28, 29, 60 ; British N. America Act, 1840 : Qualification of members of Legislative Assembly of province of Canada ; power to Her Majesty to annex Magdalen Islands to Prince Edward's Island.[3]

3 & 4 Vict. c. 78 : Sale of clergy reserves. Ss. 1 to "this Act," 8 from "Lord High" to "Majesty's," and from "of the United" to "Ireland," 11, 13, repealed.

1 *Donegani* v. *Donegani*, 3 Knapp, 63 ; *Migneault* v. *Malo*, L. R. 4 P. C. 123 ; *Reg.* v. *Randall Wixon*, 8 L. J. Q. B. 129.
2 *Macdonald* v. *Lambe*, L. R. 1 P. C. 539.
3 Order in Council under made 14 August, 1840.

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14 & 15 Vict. c. 63 : Settling boundaries between Canada and New Brunswick.

15 & 16 Vict. c. 53 : Bishopric of Quebec.

16 & 17 Vict. c. 21 : Clergy reserves.

19 & 20 Vict. c. 23 : Canada Co.

20 & 21 Vict. c. 34 : Boundaries between Canada and New Brunswick.

22 & 23 Vict. c. 26 : Regulations of trade with Indians; administration of justice.

30 & 31 Vict. c. 3;[1] British N. America Act : Union of Canada, Nova Scotia, and New Brunswick, and government thereof. Amended by 34 & 35 Vict. c. 28; 38 & 39 Vict. c. 38; 49 & 50 Vict. c. 35. Ss. 2, 4 to "provisions" lastly occurring, 25, 42, 43, 81, 88 from "and the House," 89, 127, 145, repealed.

30 & 31 Vict. c. 16 : Guarantee of international railway loan. Ss. 2, 3, repealed.

32 & 33 Vict. c. 101 : Guarantee of loan for payment to Hudson's Bay Co. for Rupert's Land.

34 Vict. c. 28 : Establishing new provinces; altering

[1] *Ss.* 65, 92 (*sub-ss.* 2, 14): *A.-G. for Quebec* v. *Reed*, L. R. 10 App. 141. *S.* 91 : *Ontario Mining Co.* v. *Seabold*, L. R. (1903) A. C. 73. *Ss.* 91 (*sub-s.* 25), 92 (*sub-s.* 1) ; *Cunningham* v. *Tomey Homma*, L. R. (1903) A. C. 151. *S.* 91 (*sub-s.* 27) : *A.-G. for Ontario* v. *Hamilton Street Railway Co.*, L. R. (1903) A. C. 524. *Ss.* 91, 92 : *L'Union de St Jacques de Montréal* v. *Bélisle*, L. R. 6 P. C. 31 ; *Cushing* v. *Dupuy*, L. R. 5 App. 409 ; *Citizens' Insurance Co. of Canada* v. *Parsons*, *Queen Insurance Co.* v. *Same*, L. R. 7 App. 96 ; *Russell* v. *Reg.*, L. R. 7 App. 829 ; *Hodge* v. *Reg.*, L. R. 9 App. 117 ; *Colonial Building, &c., Association* v. *A.-G. of Quebec*, L. R. 9 App. 157 ; *Bank of Toronto* v. *Lambe*, L. R. 12 App. 575 ; *A.-G. of Ontario* v. *A.-G. of Dominion of Canada*, L. R. (1894) A. C. 189 ; *A.-G. for Ontario* v. *A.-G. for Dominion and the Distillers, &c., Association of Ontario*, L. R. (1896) A. C. 348. *Ss.* 91 (*sub-s.* 15), 92 (*sub-s.* 13) : *Tennant* v. *Union Bank of Canada*, L. R. (1894) A. C. 31. *Ss.* 91 (*sub-s.* 29), 92 (*sub-s.* 10) : *Canadian Pacific Railway* v. *Corporation of Notre Dame de Bon Secours*, L. R. (1899) A. C. 374, *cf. Madden* v. *Fort Sheppard Railway Co.*, ibid. 626. *Ss.* 91, 92, 108: *A.-G. for Dominion* v. *A.-G. for Ontario, Quebec, and Nova Scotia*, L. R. (1898) A. C. 700. *Ss.* 91, 92, 129 : *Dobie* v. *Temporalities Board*, L. R. 7 App. 136. *S.* 92 : *Dow* v. *Black*, L. R. 6 P. C. 272 ; *A.-G. for Quebec* v. *Queen Insurance Co.*, L. R. 3 App. 1090 ; *Valin* v. *Langlois*, L. R. 5 App. 115 ; *Fielding* v. *Thomas*, L. R. (1896) A. C. 600. *S.* 92 (*Sub-ss.* 1, 4, 14) : *A.-G. for Dominion* v. *A.-G. for Ontario*, L. R. (1898) A. C. 247 ; (*sub-ss.* 2, 9) : *Brewers, &c., Association of Ontario* v. *A.-G. for Ontario*, L. R. (1897) A. C. 231. *S.* 93 : *City of Winnipeg* v. *Barrett*, L. R. (1892) A. C. 445. *Ss.* 102, 109 : *A.-G. of Ontario* v. *Mercer*, L. R. 8 App. 767. *S.* 108 : *Western Counties Railway Co.* v. *Windsor, &c., Railway Co.*, L. R. 7 App.

boundaries of provinces; legislation for territories and provinces.[1] Amended by 49 & 50 Vict. c. 35.

35 & 36 Vict. c. 45[2]: Treaty of Washington (Fisheries); suspension of Acts at variance with.

36 & 37 Vict. c. 45: Guarantee of loan for Pacific railway and canals. S. 9 repealed.

38 & 39 Vict. c. 38: Parliament of Canada.

38 & 39 Vict. c. 53: Canada Copyright Act, Act giving effect to, &c. S. 3 from "in the Act" to "ninety-three or" and the word "other" repealed.

49 Vict. c. 13: Transferring lighthouses at Cape Race to Dominion of Canada. Preamble, s. 2 (1) to "in respect thereof," (3) repealed.

49 & 50 Vict. c. 35: Representation in Parliament of Canada of territories in the Dominion, but not included in any province. Preamble repealed.

52 & 53 Vict. c. 28: Ontario boundaries.

59 Vict. c. 3: Canadian Speaker (Appointment of Deputy); confirmation of Canadian Act with respect to.

1 Edw. 7, c. 31: Pacific Cable Act, 1901.

2 Edw. 7, c. 26: Pacific Cable Act, Amendment.

NEW BRUNSWICK.—14 & 15 Vict. c. 63; 20 & 21 Vict. c. 34; 30 & 31 Vict. c. 3; 38 & 39 Vict. c. 38. See CANADA.

NEWFOUNDLAND.—59 Geo. 3, c. 38: Fisheries off.

49 Geo. 3, c. 27, s. 14: The Newfoundland Act, 1809.

5 Geo. 4, c. 67; Newfoundland Act, 1824: Administration of justice. Repealed as to coast of Labrador by 6 Geo. 4, c. 59, s. 9; and as to ss. 11, 18, 19, 21 (from "that of Governor" to "instead under this Act"),

178. *S.* 109: *S. Catherine's, &c., Co.* v. *Reg.*, L. R. 11 App. 46; *A.-G. of British Columbia* v. *A.-G. of Canada*, L. R. 14 App. 295; *Ontario Mining Co.* v. *Seybold*, L. R. (1903) A. C. 73. *Ss.* 109, 111, 112: *A.-G. for Dominion* v. *A.-G. for Ontario, A.-G. for Quebec* v. *Same*, L. R. (1897) A. C. 199. *Ss.* 109, 126: *Liquidators of Maritime Bank of Canada* v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. 437.

1 *Riel* v. *Reg.*, L. R. 10 App. 675.

2 *Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.*, L. R. 2 App. 394.

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23-34, 36, by 36 & 37 Vict. c. 91. Verbal amendments in by 53 & 54 Vict. c. 33.

5 Geo. 4, c. 68, s. 1, from "provided always" to end of section: Marriages in.

2 & 3 Will. 4, c. 78, s. 1; Newfoundland Act, 1832: Continuation of Acts and appropriation of duties.

5 & 6 Vict. c. 120; Amending Constitution. Ss. 1 to "of the same that," 5, 6, 8–11, repealed.

57 & 58 Vict. c. 60, s. 744: Foreign-going ships on fisheries off, what to be deemed.

NOVA SCOTIA.—30 & 31 Vict. c. 3: See CANADA.

PRINCE EDWARD ISLAND.—3 & 4 Vict. c. 35, ss. 28, 29, 60 (from and after the words "enacted that"): Union of Magdalen Islands with.

VANCOUVER'S ISLAND.—12 & 13 Vict. c. 48: Administration of justice in. Ss. 2, 5, repealed. Verbal amendments in by 54 & 55 Vict. c. 67.

29 & 30 Vict. c. 67: Union with British Columbia. Ss. 2–6, 9, sched., repealed; ss. 7, 8, repealed in part.

AUSTRALASIA.—51 & 52 Vict. c. 32: Imperial Defence; ratifying agreement for naval defence and providing for defence of certain ports and coaling stations, &c. Ss. 4–8, 11 in part, repealed.

1 Edw. 7, c. 31: Pacific Cable Act.

2 Edw. 7, c. 26: Pacific Cable Amendment.

AUSTRALIAN COLONIES.—5 Geo. 4, c. 86: Australian Agricultural Co.

11 Geo. 4 and 1 Will. 4, c. 24: Australian Agricultural Co.

18 & 19 Vict. c. 56: Disposal of waste lands. S. 7 repealed.

24 & 25 Vict. c. 44; Australian Colonies Act, 1861: Determining boundaries; New South Wales, Queensland, South Australia, ss, 1, 2; any contiguous colonies, s. 5; apportionment of public debt, s. 6. S. 4 repealed.

35 & 36 Vict. c. 19[1] (ss. 1, 2 as to oath, 18, 21,

[1] *Burns* v. *Nowell*, L. R. 5 Q. B. D. 444: *Australian Insurance Co.* v. *Jackson*, 33 L. T., N. S., 286.

repealed); 38 & 39 Vict. c. 51 (ss. 6, 11, so far as authorising H.M. to confer Admiralty jurisdiction, repealed): Pacific Islanders Protection Acts, 1872 and 1875.[1]

36 & 37 Vict. c. 22: Power to Legislatures to regulate customs duties. Ss. 2 from "the term country," 3, "provided always" to "any other country," repealed.

58 & 59 Vict. c. 3; Australian Colonies Duties: repealing 13 & 14 Vict. c. 59, s. 27, "provided always," to end; and 36 & 37 Vict. c. 22, s. 3, "provided always" to "any other country."

63 & 64 Vict. c. 12: Commonwealth of Australia, Constitution of.

1 Edw. 7, c. 31: Pacific Cable Act (Vancouver Island to New Zealand and Queensland); constitution and proceedings of Board; proportions of expenses and profits payable by and to the various colonies concerned.

2 Edw. 7, c. 26: Pacific Cable Amendment; to substitute Commonwealth of Australia for Governments of New South Wales, Queensland and Victoria.

NEW SOUTH WALES.—9 Geo. 4, c. 83, ss. 1–8, 10–19; Courts of Justice: s. 24;[2] laws of England at time of passing the Act to prevail in colony: ss. 34–37; escape of felons, binding artificers.

13 & 14 Vict. c. 59: Repealed so far as relates to the Constitution of the Colony, and the following sections, viz. ss. 7–10, 13, 16, 21, 22, 26, 37, 38, wholly; and as to ss. 2, 3, 11, 12, 14, 15, 17–19, 27, 22, scheds., in part.

18 & 19 Vict. c. 54:[3] Conferring Constitution;

1 These Acts define "Australian Colonies" to mean and include New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, Western Australia and Fiji; see ss. 2, 8, of the respective Acts. *McArthur & Co.* v. *Cornwall*, L. R. (1892) A. C. 75.

2 *A.-G. for New South Wales* v. *Lore*, L. R. (1898) A. C. 679; 67 L. J. P. C. 84.

3 *Powell* v. *Apollo Candle Co.*, L. R. 10 App. 282; *Barton* v. *Taylor*, L. R. 11 App. 197; *Harris* v. *Davies*, L. R. 10 App. 279.

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providing for erection of separate colonies out of. Part of sched. (2) and of s. 7 repealed by s. 4 of

24 & 25 Vict. c. 44: Erecting other colonies. S. 4 repealed.

25 & 26 Vict. c. 11: Validity of laws altering constitution.

56 & 57 Vict. c. 72: Colonial Acts confirmation.

1 Edw. 7, c. 29; Colonial Acts Confirmation: Confirming Federal Elections Act, No. 73 of 1900, and Parliamentary Electorates Redistribution Act, No. 84 of 1900.

QUEENSLAND.—24 & 25 Vict. c. 44, s. 3: Affirming authority of government and legislature in.

56 & 57 Vict. c. 72: Colonial Acts Confirmation.

1 Edw. 7, c, 29: Colonial Acts Confirmation; confirming Parliament of Commonwealth Elections Act and Elections Acts, 1885–98, Amendment Act, No. 25 of 1900.

SOUTH AUSTRALIA.—5 & 6 Vict. c. 61, s. 4: Transportation to forbidden.

13 & 14 Vict. c. 59: Repeals same as under New South Wales; see Statute Law Revision Act, No. 2, 1893.

24 & 25 Vict. c. 44, s. 1: Addition to colony.

25 & 26 Vict. c. 11: Validity of Acts altering constitution.

28 & 29 Vict. c. 63: Validity of laws.

56 & 57 Vict. c. 72: Colonial Acts Confirmation.

VAN DIEMEN'S LAND (TASMANIA).—6 Geo. 4, c. 39: Van Diemen's Land Co.

9 Geo. 4, c. 83, ss. 1–8, 10–19; Courts of Judicature: S. 24;[1] laws of England at time of passing Act to prevail in colony; ss. 34–37; escape of felons, binding artificers.

10 & 11 Vict. c. 57: Granting land to Van Diemen's Land Co.

[1] *Astley* v. *Fisher*, 6 C. B. 572; *Devine* v. *Holloway*, 14 Moo. P. C. C. 290; *Harris* v. *Davies*, L. R. 10 App. 279. *A.-G. for N.S. W.* v. *Lore*, L. R. (1898) A. C. 679; 67 L. J. P. C. 84.

13 & 14 Vict. c. 59 : Repeals same as under New South Wales; see Stat. Law Rev. Act, No. 2, 1893.

25 & 26 Vict. c. 11 : Confirmation of Acts altering Constitution.

56 & 57 Vict. c. 72 : Colonial Acts Confirmation.

VICTORIA.—13 & 14 Vict. c. 59 : Repeals same as under New South Wales ; see Stat. Law Rev. Act, No. 2, 1893.

18 & 19 Vict. c. 55[1]: Conferring Constitution. Ss. 2 in part, 5, and Sch. 2 in part, repealed.

25 & 26 Vict. c. 11 : Validity of Acts altering Constitution.

56 & 57 Vict. c. 72 : Colonial Acts Confirmation.

WESTERN AUSTRALIA.—13 & 14 Vict. c. 59, so much of as provided for in 53 & 54 Vict. c. 26, s. 2.

25 & 26 Vict. c. 11: Validity of Acts altering Constitution.

53 & 54 Vict. c. 26 : Conferring Constitution.

56 & 57 Vict. c. 72 : Colonial Acts Confirmation.

1 Edw. 7, c. 29 : Colonial Acts Confirmation; confirming Act to correct errors in Constitution Acts Amendment Act, 1899, No. II. of 1900, and Constitution Act Amendment Act, No. V. of 1900.

NEW ZEALAND.—13 & 14 Vict. c. 70 : Canterbury Association.

14 & 15 Vict. c. 84 : Ditto.

14 & 15 Vict. c. 86 : Management of settlements by New Zealand Co.

15 & 16 Vict. c. 72 :[2] Granting representative Constitution; repealing the previous Acts so far as repugnant to it. Ss. 1–31, 33, 34 with savings, 35–9, 40 in part, 41–3, 44 in part, 45, 49–52, 60, 62, 63, 64 in part, 66 in part, 70, 72 in part, 73, 75–9, 81, sched., repealed.

15 & 16 Vict. c. 88 : Bishopric of Christchurch.

20 & 21 Vict. c. 51; 29 & 30 Vict. c. 104 (s. 4 repealed); 33 & 34 Vict. c. 40 (s. 3, last paragraph, repealed); 36 & 37 Vict. c. 15, (s. 1 partly repealed): Loan guarantee.

[1] *Speaker of Legislative Assembly of Victoria* v. *Glass*, L. R. 3 P. C. 560.

[2] *Ashbury* v. *Ellis*, L. R. (1893) A. C. 339.

20 & 21 Vict. c. 53, s. 2 (part of): Amendment of Act granting representative Constitution.

31 & 32 Vict. c. 93: Government; equitable interests in land.

26 & 27 Vict. c. 23: Boundaries. S. 1 repealed.

29 & 30 Vict. c. 104: New Zealand Loans Act, 1866.

33 & 34 Vict. c. 40 (s. 3, last paragraph, repealed): Public loans (Roads). Amended by 36 & 37 Vict. c. 15; s. 1 to "as follows," and the words "after the passing of this Act," repealed.

1 Edw. 7, c. 31: Pacific Cable.

FIJI.—41 & 42 Vict. c. 61: Validating marriages celebrated in before erection into a colony.

CEYLON.—37 & 38 Vict. c. 24 (ss. 2, 4, 6 repealed); 42 & 43 Vict. c. 77, s. 4: Loan for harbour of Colombo.

HONG KONG.—18 and 19 Vict. c. 104: Powers of Legislature as to Chinese passenger ships. S. 17 repealed.

22 & 23 Vict. c. 9: Providing for exercise of duties of Chief Superintendent in China during absence or vacancy of the office.

LABUAN.—29 & 30 Vict. c. 115: Separation from India; government. Ss. 1, 4 from "and all judicial" to "authorities therein," repealed.

MALAY STATES.—62 & 63 Vict. c. 36: Colonial Loans.

MALTA.—41 Geo. 3, c. 103, s. 3, the Malta Act, 1801; 39 & 40 Vict. c. 36, s. 164: To be deemed part of Europe.

CYPRUS.—62 & 63 Vict. c. 36: Public loan to.

MAURITIUS.—39 & 40 Vict. c. 36, s. 150: Prohibition of importation of base coin into.

55 & 56 Vict. c. 49: Mauritius Hurricane Loan, guarantee of.

62 & 63 Vict. c. 36: Public Loan to.

SEYCHELLES.—62 & 63 Vict. c. 36: Colonial Loans.

PACIFIC ISLANDS.—35 & 36 Vict. c. 19; ss. 1, 2 as to oaths, 18, 21 repealed; 38 & 39 Vict. c. 51 (ss. 6,

11, so far as authorising H.M. to confer Admiralty jurisdiction, repealed): Pacific Islanders' protection.[1] S. 7 "her heirs and successors" repealed.

S. HELENA.—3 & 4 Will. 4, c. 85, s. 112: Vesting island and government in Crown.

STRAITS SETTLEMENTS.—29 & 30 Vict. c. 115: Separation from India; government of. Ss. 1–4 from "and all judicial" to "authorities therein," repealed.

37 & 38 Vict. c. 38: Apprehension and trial of offenders for offences committed in Malay Peninsula, &c.

HONDURAS, BRITISH.—44 & 45 Vict. c. 36: Court of Appeal for; Supreme Court of Jamaica to constitute. Partly repealed.

WEST INDIA ISLANDS.—1 & 2 Vict. c. 67 (s. 1 to "same that," 11, repealed): Regulation of prisons in.

13 & 14 Vict. c. 15: Court of Appeal.

31 & 32 Vict. c. 120: Relief of consolidated fund from salaries of bishops and clergy. S. 1 repealed from "and all the powers" to "hereby repealed."

BARBADOS.—5 & 6 Vict. c. 4, s. 1: Increasing bishoprics and archdeaconries.

62 & 63 Vict. c. 36: Public Loan to.

GRENADA.—39 & 40 Vict. c. 47: Provision for constitution and government of. Repealed as to Tobago, *qu. vide*. Sched. (Act of St. Vincent) repealed in part.

JAMAICA.—5 & 6 Vict. c. 4, s. 1: Increasing bishoprics and archdeaconries.

25 & 26 Vict. c. 55: Jamaica Loan Act, 1862. Commutation of debt.

26 & 27 Vict. c. 31: Government of Cayman Islands.

29 & 30 Vict. c. 12: Altering government of. Ss. 4, 5 repealed.

32 & 33 Vict. c. 69: Guarantee of loans. Preamble, ss. 2 to "refund loans," 10, and sched., repealed.

[1] *Burns* v. *Nowell*, L. R. 5 Q. B. D. 444; *Australasian Insurance Co.* v. *Jackson*, 33 L. T., N. S., 286.

62 & 63 Vict. c. 36 : Public Loan to.

LEEWARD ISLANDS.—34 & 35 Vict. c. 107 : Union of into one colony of six presidencies ; government of. Ss. 2, 4, 7 from "composed" to "assembly," 8, 9, 13, from "within six" to afterwards," 19, 21, repealed.

ST. VINCENT.—39 & 40 Vict. c. 47 : Provision for constitution and government of. Repealed as to Tobago. Sched. (Act of St. Vincent) repealed in part.

62 & 63 Vict. c. 36 : Public Loan to.

TOBAGO.—50 & 51 Vict. c. 44 : Trinidad and Tobago Act, 1887, enabling Her Majesty by Order in Council to unite Trinidad and Tobago into one colony. Trinidad and Tobago united as from January 1, 1889, by Order in Council dated November 17, 1888.

TRINIDAD.—50 & 51 Vict. c. 44.—See TOBAGO.

62 & 63 Vict. c. 36 : Public loan to.

WINDWARD ISLANDS.—52 & 53 Vict. c. 33 : Power to modify constitution of Court of Appeal for.

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A TOPICAL INDEX OF CASES

DECIDED IN THE PRIVY COUNCIL ON APPEAL

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AFRICAN COLONIES.

CAPE OF GOOD HOPE.

1. Act of State—Concession granted by paramount chief of Pondoland before annexation by H.M.—Privileges and rights conferred not enforceable against Crown after annexation—No jurisdiction in municipal courts—No power in court to make declaration of right—Crown Liabilities Act, 1888.
   Cook v. *Sprigg*, L. R. (1899) A. C. 572; 68 L. J. P. C. 144.

2. Agreement—Supply of water—Monopoly of.
   Kimberley Waterworks Co. v. *De Beers Consolidated Mines*, L. R. (1897) A. C. 515; 66 L. J. P. C. 108.

   Appeal, special leave to: see Practice.

3. Assignment of movable and immovable property for the benefit of creditors—Suit to set aside.
   Stanford v. *Brunette*, 14 Moo. P. C. C. 35.

4. Bank—Branches of—Bank notes in circulation or outstanding—Bank notes in possession of any office of bank—Act 6 of 1864, s. 9.
   Bank of Africa v. *The Colonial Government*, L. R. 13 App. 215; 57 L. J. P. C. 66.

5. Bishop, colonial—Suspension and deprivation of clergyman by—Offence warranting—Refusal to obey synod—*Status* of church and ministers in Cape of Good Hope.
   Long v. *Bishop of Cape Town*, 1 Moo. P. C. C., N. S., 411.

6. Church of South Africa, *status* of—Construction of articles of constitution—Endowments of Church of England in South Africa—Effect of proviso repudiating decisions of the Privy Council in England.
   Merriman v. *Williams*, L. R. 7 App. 484; 51 L. J. P. C. 95.

CAPE OF GOOD HOPE—*continued.*

7. Company—Authority by memorandum of association to carry on business in any part of world—Not taxable under Law No. 3 of 1864, sched. 17, s. 2, relating to companies some of whose dealings specifically authorized to be carried on in the colony.
Marshall v. *Orpen*, L. R. (1895) A. C. 607; 64 L. J. P. C. 177.

8. Company—Shares issued at discount—Directors' responsibility to company for discount allowed—Non-liability beyond discount where no proof of fraud towards company or of further resulting damages.
Hirsche v. *Sims*, L. R. (1894) A. C. 654; 64 L. J. P. C. 1.

9. Contract, construction of—Act 11 of 1863, s. 2—Guarantee or agency—Really sale—Liability to duty on purchase-money.
Hutton v. *Lippert*, L. R. 8 App. 309; 52 L. J. P. C. 54.

10. Contract—"Flotation"—British South African Co.'s mining Ordinance, 1890, ss. 26, 27, 28.
Torva Exploration Syndicate v. *Kelly*, L. R. (1900) A. C. 612; 69 L. J. P. C. 115.

11. Customs Ordinance, No. 6 of 1853, ss. 24, 25, 50—Entry of cases omitting mention of the dutiable part of the contents—Forfeiture of all contents—Valid entry not affected by invalid entry in same bill—Treble penalties—Fraudulent intention need not be proved.
Graham v. *Pocock*, L. R. 3 P. C. 345; 39 L. J. P. C. 38.

12. Dutch Reformed Church, constitution and government of—Ordinances of 1843 and 1847—Charges of false doctrine against ministers—Jurisdiction of synod and presbytery.
Murray v. *Burgess*, L. R. 1 P. C. 362; 36 L. J. P. C. 44.

13. Ecclesiastical corporation which colony must recognise, power of Crown to create—Queen's letters patent creating a metropolitan and two suffragan bishops for colony of Cape of Good Hope—No confirmation by Legislative Council and House of Assembly—Deposition of suffragan by metropolitan—Power of Crown to confer jurisdiction or coercive legal authority on metropolitan over suffragan—Oath of canonical obedience, effect of—Ultimate appellate jurisdiction to Archbishop of Canterbury—Jurisdiction of Judicial Committee in ecclesiastical causes—Dispute in colonies between independent prelates—Crown cannot create court to administer other than common law—Ecclesiastical law not carried by settlers to colony or settlement where no established church.
In re Bishop of Natal, 3 Moo. P. C. C., N. S., 115.

14. Electric leak—Escape of electric current—Disturbances to submarine cable—Act 22 of 1895, s. 4—Act 29 of 1896, s. 4.
Eastern and South African Telegraph Co. v. *Cape Town Tramways Co.*, L. R. (1902) A. C. 381; 71 L. J. P. C. 122.

15. Executors, liability of—Duty of to convert within six months—Discretion of, nature of—Act 17 of 1875 and bye-laws thereunder—Right of any beneficiary to relief.
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16. Executors—Heir subject to a *fidei-commissum*—Power to make compromise binding on heir's children.
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17. *Fidei commissum conditionale*—Sale of property subject to restraint on alienation—Mortgages by purchaser not breach of condition till enforced by judicial sale.
Josef v. *Mulder*, L. R. (1903) A. C. 190; 72 L. J. P. C. 50.

18. Governor—Extent of legislative power conferred on—Pondoland Annexation Act, No. 5 of 1894, s. 2—Territory subject to such laws, statutes and ordinances as already proclaimed and such as after annexation to the colony the Governor shall from time to time by proclamation declare to be in force in such territories—No power conferred to make new laws—Only to transplant to new territories and there enact laws, statutes, and ordinances already existing and operative in other parts of the colony—Proclamation of arbitrary arrest, conviction, and punishment of respondent, *ultra vires*.
Sprigg v. *Sigcau*, L. R. (1897) A. C. 238; 66 L. J. P. C. 44.

19. Husband and wife—Community of goods—Mutual will—Power of revocation—Adiation—Acquiescence—Roman-Dutch law.
Denyssen v. *Mostert*, L. R. 4 P. C. 236; 41 L. J. P. C. 41.

20. Husband and wife—Community of property—Codicil to will of—Construction.
De Jager v. *De Jager*, L. R. 11 App. 411; 55 L. J. P. C. 22.

21. Husband and wife—Placaat of Charles V., Oct. 4, 1540—Insolvency Ordinance No. 6 of 1843, ss. 34, 36—Conflict of laws—Domicile—Marriage settlement made in England affecting real estate in Cape Colony — Bond of hypothecation — Registration — Bankruptcy — Order of priority of creditors in separate and joint estate of bankrupts—Postponement of wife's claim under settlement to creditors —Undue preference.
Thurburn v. *Steward*, L. R. 3 P. C. 478; 40 L. J. P. C. 5.

22. Hypothecation of immovable and other property—Debtor's affairs hopeless—Insolvency Ordinance No. 6 of 1843, s. 84—Undue preference.
Smith v. *Carpenter*, 12 Moo. P. C. C. 101.

23. Land, expropriation of for railway purposes without compensation—Intention to enact not to be imputed to legislature unless expressed in unequivocal terms.
Commissioner of Public Works v. *Logan*, L. R. (1903) A. C. 355; 72 L. J. P. C. 91.

24. Land, grant of—Diagram repugnant to terms of deed—Latter to prevail—Proclamation of Aug. 6, 1813, arts. 8, 13.
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25. Land, purchase of—Advance of purchase-moneys to purchaser's agent acting under invalid power of attorney and mortgaging purchaser's estate—Balance unaccounted for—Roman-Dutch law.
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26. Lease—Improvements—Permanent buildings erected by lessee—Right of removal.
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27. Licence from Governor-General of India to trade between Calcutta and Canton—Voyage from Canton to Cape of Good Hope—Illegality—54 Geo. 3. c. 34—Manifest.
Balston v. *Bird*, 1 Knapp, 121.

28. Marine insurance—Implied warranty of seaworthiness—Different complements and equipments at different stages of voyage—Continuance of seaworthiness—Negligence of master and crew no defence.
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29. Martial law—Custody of petitioner by military authority where it prevails affirmed—Civil tribunals—Special leave to appeal refused.
Marais v. *General Officer commanding lines of communication and Attorney-General of Colony*, L. R. (1902) A. C. 109; 71 L. J. P. C. 42.

30. Martial law, Courts of—No jurisdiction in Supreme Court to review judgments of—Deputy administrator of martial law also resident magistrate—Forms of magistrate's court used by mistake in prosecutions under martial law—Convictions not irregular.
Attorney-General for Cape of Good Hope v. *Van Reenen; Same* v. *Smit*, L. R. (1904) A. C. 114; 73 L. J. P. C. 13.

31. Prescription—Uses and enjoyment of water—Rights of the owner of springs—Rights of riparian proprietors—Roman-Dutch law.
Commissioners of French Hoek v. *Hugo*, L. R. 10 App. 336; 54 L. J. P. C. 17.

32. Principal and surety—Civil law—Laches of creditor—Loss of benefit of hypothec of debtor—No discharge of surety.
Macdonald v. *Bell*, 3 Moo. P. C. C. 315.

33. Roads, curators of public—Right to take ground for repair—Compensation—Act No. 10 of 1864.
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34. Sale of goods—Payment by bill of exchange drawn by vendors upon general agents of both vendors and purchasers—Credit of vendors and debit of purchasers in books of agents—Acceptance of bill by agents—Stoppage of acceptors before maturity of bill—Protest for non-payment—Bill of exchange only payment if bill honoured at maturity—Opening of credit by purchasers not a satisfaction of vendors' demand.
Maxwell v. *Deare*, 8 Moo. P. C. C. 363.

35. Salvage—Reluctance to review—Risk of avoiding insurance by deviation to salve—Derelict—Increase of amount.
The Scindia, L. R. 1 P. C. 241; 35 L. J. P. C. 53.

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36. Surveys—Action against Government for fees for—Fees payable in advance—Received by district secretary under arrangement between him and surveyor—Insolvency of district secretary—No right to claim arrears from the Government.
Van Rooyen v. *Vander Reit*, 2 Moo. P. C. C. 177.

37. Trustees, removal of—Equitable jurisdiction, principle on which exercised.
Letterstedt v. *Broers*, L. R. 9 App. 371; 53 L. J. P. C. 44.

38. Water, rights to—Regulations and ordinances of Governor and Council as to—Power to make—Rights of lower proprietors.
Van Breda v. *Silberbauer*, L. R. 3 P. C. 84; 39 L. J. P .C. 8.

39. Will—Codicil to—Construction of.
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1. *Actio doli*—Other remedies barred by fraud complained of.
Douglas v. *Sander and Co.*, L. R. (1902) A. C. 437; 71 L. J. P. C. 91.

2. Anglican church in colonies—Purely voluntary association.
Bishop of Natal v. *Green*, 18 L. T., N. S., 112.

3. Cathedral—Crown grant of land for—Trusteeship of.
Bishop of Cape Town v. *Bishop of Natal*, L. R. 3 P. C. 1; 38 L. J. P. C. 58.

4. Company—Articles of Association—Power of chairman to refuse adjournment of meeting—Doubt at hearing of appeal whether judgment final—Importance of questions in controversy—Prevention of further litigation—Special leave to appeal granted.
Salisbury Gold Mining Co. v. *Hathorn*, L. R. (1897) A. C. 268; 66 L. J. P. C. 62.

5. Company—Contract made for before incorporation—Company cannot obtain benefit of, by adoption or ratification.
Natal Land Co. v. *Pauline Colliery Syndicate*, L. R. (1904) A. C. 120; 73 L. J. P. C. 22.

6. Company—Lien by on member's shares—Articles of association—Lien not lost or waived by accepting authority from member to sell certain shares on default without prescribed delay.
Bank of Africa v. *Salisbury Gold Mining Co.*, L. R. (1892) A. C. 281; 61 L. J. P. C. 34.

7. Company—Speculative transactions in shares not illegal by Natal law—Anonymous associations or syndicates.
Laughton v. *Griffin*, L. R. (1895) A. C. 104.

8. Executor, duties of—Sale by to himself void or voidable—Suit by legatee—Rights of creditors.
Beningfield v. *Baxter*, L. R. 12 App. 167; 56 L. J. P. C. 13.

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9. Insane person, contract by void not voidable—Mortgage bond under power of attorney—Right in equity of *negotiorum gestor* to recover moneys expended in good faith and beneficial to insane person.
Molyneux v. *Natal Land and Colonisation Co.*, L. R. (1905) A. C. 555; 74 L. J. P. C. 108.

10. Land, grant of—Reservation of right to construct watercourses—Inclusion of right to divert streams.
Remfry v. *Surveyor-General of Natal*, L. R. (1896) A. C. 559; 65 L. J. P. C. 72.

11. Lands taken under statutory compulsion—No power to demand transfer from owner—Lands Clauses Consolidation Act, No. 16 of 1872.
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12. Lands, unregistered transfer of—Priority of—*Dolus malus*—Registered transfer set aside.
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13. Legal estate—Registration—Equitable estate prior in time—Evidence—*Res inter alios acta*—Judgment in another suit.
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14. Libel—Privilege—Damage.
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15. Licensing officer—Appeal from to town council—No appeal from town council—Law 18 of 1897, ss. 5 and 6—Summons for writ of review by Supreme Court not writ of *certiorari*.
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16. *Mora*—Sale of shares—Unreasonable delay in delivery.
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17. Partnership—Ordinance No. 4 of 1849—Joint stock company—Limited liability.
Aldridge v. *Cato*, L. R. 4. P. C. 313.

18. Public officer, suit against in official capacity—Jurisdiction—Liability of servants of Crown—Petition of right.
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19. Special Court, conviction by—Acting judge of Supreme Court judge thereof within meaning of Act No. 14 of 1900—Repugnancy to English law—Colonial Laws Validity Act (28 & 29 Vict. c. 63)—Special leave to appeal refused.
Reg. v. *Marais, Ex parte Marais*, L. R. (1902) A. C. 51; 71 L. J. P. C. 32.

20. Spouses—Law No. 22 of 1863, s. 7—Contract to bring selves within law—Non-registration, inoperative for—Mutual will—Payment of legacies of husband dying first, date for.
Taylor v. *B. Sturrock*; *W. Sturrock* v. *B. Sturrock*, L. R. (1900) A. C. 225; 69 L. J. P. C. 29.

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21. Statute, construction of—Intention of—Operative words—Words reducing statute to nullity rejected as surplusage.
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22. Street, encroachment on—Private Act of 1866—Survey under—Reference by Act of resulting questions to court of arbitration—Exclusion, as to such questions, of resort to ordinary courts of justice—Future and previously existing encroachments—Non-applicability of Act to.
Mayor, &c., of Pietermaritzburg v. *Natal Land, &c., Co.*, L. R. 13 App. 478; 57 L. J. P. C. 82.

23. Surety bond given by woman—Non-renunciation by woman of legal rights—Effect of.
Mackellar v. *Bond*, L. R. 9 App. 715.

24. Suspension from office of Recorder by Lieut.-Governor and Executive Council under Ordinance No. 14 of 1845—Reforming affidavit as to personal conduct of Lieut.-Governor instead of rejecting—Interference of private feelings with administration of justice—Rescission of order of suspension—Salary of appellant.
Cloete v. *Reg.*, 8 Moo. P. C. C. 484.

25. Unseaworthiness at starting—Personal negligence of owner in loading—Liability of—Charter-party.
Master and Owners of SS. City of Lincoln v. *Smith*, L. R. (1904) A. C. 250; 73 L. J. P. C. 45.

26. Verdict of jury—Jurisdiction of court to set aside—Court not Court of Appeal on facts—Could jury reasonably find?
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27. Will—Contingency of either son dying before brother—Clause of substitution—Vesting—Divesting.
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28. Will—Direct substitution in favour of children surviving testator's widow—Exclusion of heirs of predeceased children—Fideicommissary substitution—Roman-Dutch law, no rule of construction in authorizing children to include grandchildren.
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1. Charge upon the subject, imposition of—Cape Colony Act, No. 6 of 1864—Construction—Bank notes.
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2. *Erfpacht*, grant in, subject to conditions—Construction—Full ownership—Beneficial ownership of minerals granted in perpetual quitrent.
   Webb v. *Giddy*, L. R. 3 App. 908; 47 L. J. P. C. 71.

3. Land—Indefeasible British title to—Judgment from land court of Griqualand W.—Presidential grant of Dec. 3, 1862—Conditions not expressed in not forced upon grantee—Proper officer to sue in respect of title to lands.
   Webb v *Wright*, L. R. 8 App. 318; 52 L. J. P. C. 40.

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1. Lease of land for agricultural purposes—Covenant not to sell or lease for building—Breach—Forfeiture.
   Short v. *Turffontein Estates*, L. R. (1905) A. C. 584; 74 L. J. P. C. 148.

2. Supreme Court—No jurisdiction in to entertain appeal from decision of High Court of Transvaal Republic, which final before war—Proclamation No. 14 of 1902, s. 16—Patent, cancellation of by High Court in action to which Attorney-General not party—Transvaal Patent Act, No. 6 of 1887, ss. 29–31.
   African Gold Recovery Co. v. *Hay*, L. R. (1904) A. C. 438; 73 L. J. P. C. 108.

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1. Contempt of Court—Order of Recorder's Court disbarring and striking practitioner off rolls for—Reversal and rescission of.
   Semble—A fine imposed by Court of Record for contempt cannot be remitted by Judicial Committee on appeal.
   Smith v. *Justices of Sierra Leone*, 3 Moo. P. C. C. 361.

2. Contempt of Court—Orders of Judge striking off rolls for—Terms of leave to appeal from—Discharge of orders—Direction to appellant to apply for re-admission in colony.
   Smith v. *Justices of Sierra Leone*, 7 Moo. P. C. C. 174.

3. Contempt of Court—Fining practitioner for by Court of Record in colonies—Jurisdiction of Judicial Committee to entertain appeal from—Court sole judge of what constitutes contempt—Reference by Colonial Office to Judicial Committee of whole complaint against Judge—Advice to remit part of fines.
   Rainy v. *Justices of Sierra Leone*, 8 Moo. P. C. C. 47.

4. Customs Regulations, breach of—Seizure of goods for—Restoration without damages or costs—Probable cause—Appeal for costs not allowed—*Xenos* v. *Aldersley*, 12 Moo. P. C. C. 359, approved.
   Wilson v. *Reg.*, L. R. 1 P. C. 405.

5. Customs Ordinances, breach of—Condemnation of boats and goods for—Vessel not within three miles of shore at time of unloading—Burden of proof—Deputy Judge, appointment of.
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6. Judge without jury—Power to adjourn or postpone judgment or verdict—Allowing amendment to declaration.
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7. Money had and received—Fraud, question of put aside—Interest not recoverable—Costs in cases between Crown and subject—Rule in House of Lords adhered to by Board—Crown neither pays nor receives unless case governed by local statute, or circumstances exceptional.
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8. Revenue laws, breach of—Condemnation of goods and owner in penalties—Rule as to security for costs not applying to appeal against penalties—Appeal *in formâ pauperis* where appellant not heard below—*Ex parte* decision.
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9. Slave Trade Acts—Attachment for non-payment of costs in appeal under—Discharge upon *supersedeas* by Crown—Costs—5 Geo. 4, c. 113, s. 44.
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10. Slave Trade Acts—Seizure of ship under 5 Geo. 4, c. 113—Restoration of by Court below without damages and costs—Rule of evidence in 5 & 6 Will. 4. c. 60—Application of not admitted.
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11. Slave Trade Acts—Seizure of Portuguese ship in harbour—Obligation of seizor to justify acts—Absence of reasonable ground of suspicion—*Prima facie* evidence of slave-trading—Treaty with Portuguese—6 & 7 Vict. c. 53.
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1. Appeal to local Court of Appeal—Conditions of giving leave—Improper exercise of discretion as to imposing—Supreme Court Order No. 4 of 1876, Ord. LIII.
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2. Bankruptcy—English Acts extend to all H.M.'s dominions—Vesting of land in colony in trustee appointed under English Bankruptcy Act—Requirements of local law as to conditions of transfer to be satisfied—Costs against Government under Petition of Right Ordinance, 1877, s. 8, resisting payment of price of bankrupt's land taken under Public Lands Ordinance, 1876.
The Supreme Court of Gold Coast Colony had no bankruptcy jurisdiction in 1877.
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3. Principal and agent—Authority of agent to borrow for carrying on principal's business—Circumstances of emergency justifying borrowing on exceptional terms outside ordinary course of business—Duty of lender to inquire as to emergency—Liability of principal to lender *bonâ fide* and without notice of excess of authority by agent.
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1. Damages—Reversal of sentence condemning ship as slaver—Restoration of property with costs—Probable or possible profits disallowed as damages.
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2. Libel—Privileged communication—Irregularity of proceedings at trial—Misdirection—Leave to appeal on special terms—Stay of execution.
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3. Salvage reward, how estimated—Deviation by salving ship—Vitiation of insurance—Liability to owners of cargo—Danger of salving service.
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4. Slaver, seizure of trading vessel on coast of Africa belonging to British owners as—Condemnation under 2 & 3 Vict. c. 73 in *ex parte* proceedings—Appeal by owners—Condemnation reversed because (1) no probable grounds for seizure; (2) proceedings irregular, chief mate, supercargo, or boatswain not having been sent with vessel to give evidence, according to Admiralty Instructions, s. 1, art. 21—Consequential damages not allowed.
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5. Slave Trade Act, 5 Geo. 4, c. 113—Necessary conditions to condemnation—Employment of ship in contravention of Act with knowledge of owner—Goods shipped by shippers knowingly for purposes of slave trade.
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1. Administration suit—Fund carried to separate account—Assignment of for value—Not liable in hands of assignee for value without notice for assignor's general liability in suit—Notice that assignor is trustee and defendant in suit for account insufficient.

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2. Annuity—Covenant to pay to woman for separate use without anticipation—Marriage of covenantor and annuitant—Survival of annuitant—Suspension of annuity.

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3. Appeal to Supreme Court—Appealable value—Issue as to, to be decided by the Court of Appeal—Affidavits admissible.

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4. Arbitration—Reference of suit against company—37 Vict. No. 19, s. 113—Application of to voluntary arbitrations only—55 Vict. No. 32, s. 12—Arbitrator under—Declaration of before justices unnecessary.

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5. Arbitration—Verdict on award of portion of sum claimed—Apportionment of costs between portions of claims allowed and disallowed not permissible—Evidence of arbitrators.

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7. Attorney, declaration of, that he has no notice of revocation of his power—When conclusive—New South Wales Act, No. 25, s. 1.
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8. Average bond—Average contribution to be ascertained and adjusted in usual manner—No duty to employ average stater.
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9. Bank Incorporating Acts—Construction—Foreclosure of mortgage.
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10. Bank—Transmission of credit to branch—Acceptance by branch—Effect of—Position of branch banks, what.
Prince v. *Oriental Bank*, L. R. 3 App. 325; 47 L. J. P. C. 42.

11. Banker and customer—Fraudulent detention of money by customer's cashier—Consequent unauthorized overdraft unknown to customer—Liability of customer.
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12. Bankruptcy—Proof against partnership estate in respect of joint debts.
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13. Bankruptcy, proof of debt in—Guarantors—Payment by some of to suspense account under agreement with creditor—Proof for full debt guaranteed against estate of bankrupt co-surety not party to agreement.
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14. Bankruptcy Act, 1887, s. 119—Rule of procedure giving jurisdiction to annul act of bankruptcy *ultra vires*—Registrar's judgment inadmissible in evidence in action against respondent for malicious presentation of petition of sequestration—Indirect motive—Fraud—Abuse of process.
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15. Bill of exchange—Acceptance of payable four and five months after date—Drawers declared insolvent—Fraudulent preference—Insolvent Act, 5 Vict. No. 17.
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17. Bill of sale of all debtor's property—Delay in possession and registration till just in time to prevent avoidance under Bills of Sale Act—

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18. Bond of indemnity—Penal sum in—Enforced to full amount.
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19. Civil Service Act, 1884—Right of Crown to abolish civil office not taken away by—No compensation by ss. 10, 46, unless superannuation allowance due.
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20. Civil Service Act, 1884, s. 48—Superannuation allowance—Additional years of service not necessarily continuous to entitle to—Special leave to appeal on special terms as to costs.
Walker v. *Simpson*, L. R. (1903) A. C. 208; 72 L. J. P. C. 58.

21. Crown, civil servant of—Dismissal of—Public Service Act, 1895 (59 Vict. c. 25), s. 58, not retrospective in operation—Civil Service Act, 1884.
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22. Crown, civil servants of—Power to dismiss at pleasure except when otherwise expressly provided—Restriction of power of Crown by Civil Service Act of 1884.
Gould v. *Stuart*, L. R. (1896) A. C. 575; 65 L. J. P. C. 82.

23. Clubs, principle on which founded—Members' liability limited to subscription—Trustees' liability in respect of leases—Indemnity for out of club's property on which lien—Indemnification of trustees by *cestuis que trustent* excluded by nature of transaction.
Wise v. *Perpetual Trustee Co.*, L. R. (1903) A. C. 139; 72 L. J. P. C. 31.

24. Coal Mines Regulation Act, 1896, s. 38, sub-s. 1—Payment of miners according to amount excavated—Yardage of excavation.
Humble v. *Humphreys*, L. R. (1902) A. C. 207; 71 L. J. P. C. 18.

25. Commissioner of Crown Lands, office of, created by New South Wales Act, 4 Will. 4, No. 110—Tenure *durante bene placito*—No appeal to Queen in Council from order of amotion by Governor-General and Executive Council—22 Geo. 3, c. 75 applicable only to offices held by patent for life or term—No jurisdiction in Judicial Committee to consider dismissal of public servant by Governor-General of colony from office held during pleasure unless on express reference by Crown—Order for leave to appeal granted on report of Judicial Committee without prejudice to respondent's right to show cause—Cause shown on counter-petition—Order rescinded.
Ex parte Robertson, 11 Moo. P. C. C. 288.

NEW SOUTH WALES—*continued.*

26. Companies Act, 1874, s. 57—English Companies Act, 1867, s. 25—Deed of sale—Contract—Liability on shares for calls.
Smith v. *Brown*, L. R. (1896) A. C. 614; 65 L. J. P. C. 89.

27. Company—Adoption of contract made before formation—No contractual relation with vendor—Payment of shares in cash—Set-off—Companies Act of Colony, 1874, s. 57—Imperial Companies Act, 1867, s. 25, identical.
North Sydney Investment and Tramway Co. v. *Higgins*, L. R. (1899) A. C. 263; 68 L. J. P. C. 42.

28. Company—Power to create first charge on uncalled capital—37 Vict. No. 19 (identical with English Companies Act, 1862, for purposes of this case).
Newton v. *Debenture-holders, &c., of Anglo-Australian Investment Co.*, L. R. (1895) A. C. 244; 64 L. J. P. C. 57.

29. Compensation for lands compulsorily taken for public purposes—Mineral contents of land—*Onus probandi*—Assessment of damages, principles of.
Brown v. *Commissioner for Railways*, L. R. 15 App. 240; 59 L. J. P. C. 62.

30. Contract—Distinct engagements to do acts legal and illegal—Enforcement of performance of legal acts—Business of Banking Co.—Leave to appeal on special petition where no power given by Charter of Justice or Act of Parliament creating Court.
Bank of Australasia v. *Breillat*, 6 Moo. P. C. C. 152.

31. Contract—Words ambiguous—Admissibility of extrinsic evidence to show facts in minds of negotiators—"Total cost of works"—What items of cost referred to.
Bank of New Zealand v. *Simpson*, L. R. (1900) A. C. 182; 69 L. J. P. C. 22.

32. Corporation—Liability of for malicious libel published by servant in course of authorized employment.
Citizens' Life Assurance Co. v. *Brown*, L. R. (1904) A. C. 423; 73 L. J. P. C. 102.

33. Costs—Consultation with counsel—Witnesses' expenses—Shorthand-writer's notes.
Commissioners for Railways v. *O'Rourke*, L. R. (1896) A. C. 594; 65 L. J. P. C. 84.

34. Costs—Secur ty for to abide judgment—Appeal dismissed for want of prosecution—Correction of error in order as to costs.
Milson v. *Carter*, L. R. (1893) A. C. 638; 62 L. J. P. C. 126.

35. Criminal matter—Special leave to appeal refused—Comment of judge upon prisoner having refused to give evidence according to law—Not precluded by Criminal Law and Evidence Amendment Act, 55 Vict. No. 5—*Ex parte Deeming*, L. R. (1892) A. C. 422, followed.
Kops v. *Reg.*; *Ex parte Kops*, L. R. (1894) A. C. 650; 64 L. J. P. C. 34.

NEW SOUTH WALES—*continued.*

36. Criminal jurisdiction—None over offences committed without colony —Criminal Law Amendment Act, 1883, s. 54.
Macleod v. *Attorney-General for New South Wales*, L. R. (1891) A. C. 455; 60 L. J. P. C. 55.

37. Criminal Law Amendment Act, 1883 (46 Vict. No. 17), s. 423—Evidence of criminal acts other than those charged — When admissible.
Makin et ux. v. *A.-G. for New South Wales*, L. R. (1894) A. C. 57; 63 L. J. P. C. 41.

38. Criminal proceedings—New trial for felony—Prerogative of Queen to exercise appellate jurisdiction from colonies—Cautious exercise of in criminal cases—Leave to appeal only in special cases—Evidence in criminal cases—Judge's notes.
Reg. v. *Bertrand*, L. R. 1 P. C. 520; 36 L. J. P. C. 51; 4 Moo P. C. C., N. S., 460.

39. Criminal proceedings—Murder—New trial—Special leave to appeal against grant of.
Reg. v. *Murphy*, L. R. 2 P. C. 35; 37 L. J. P. C. 21; 5 Moo. P. C. C., N. S., 47.

40. Criminal proceedings—Appeal to Privy Council—No jurisdiction to grant new trial for felony—*Venire de novo*—Defective proceedings.
Reg. v. *Murphy*, L. R. 2 P. C. 535; 38 L. J. P. C. 53; 6 Moo. P. C. C., N. S., 177.

41. Cross actions tried separately—Contradictory verdicts—New trial of both together—One verdict against weight of evidence.
Australasian Steam Navigation Co., Owners of SS. Birksgate v. *Smith & Sons, Owners of Barrabool*, L. R. 14 App. 321; 58 L. J. P. C. 101.

42. Crown grant—Reservation of land in, effect of—Confirmation of doubtful title.
Attorney-General for New South Wales v. *Dickson*, L. R. (1904) A. C. 273; 73 L. J. P. C. 48.

43. Crown grants of land—Right to resume—Rule against perpetuities inapplicable to Crown grants in colony.
Cooper v. *Stuart*, L. R. 14 App. 286; 58 L. J. P. C. 93.

44. Crown lands, grants of—Imperfect description—Possession by grantee for more than thirty years—Payment of quit-rent—Handwriting of deceased witness made at time of examination by Commissioners but not returned with depositions—Admissibility for comparison to prove signature of deed—Burden of proof of signature—Letter not in evidence not admissible as evidence of handwriting.
Doe v. *Wilson*, 10 Moo. P. C. C. 502.

45. Crown Lands Alienation Act, 1861 (25 Vict. No. 1), ss. 13, 16, 18, 21 —Conditional purchase in name of infant by strangers—Non-compliance with conditions of Act.
Tooth v. *Power*, L. R. (1891) A. C. 284; 60 L. J. P. C. 39.

46. Crown Lands Alienation Act, 1861, s. 13—Lands forfeited to Crown —Conditional sale of.
Blackburn v. *Flavelle*, L. R. 6 App. 628; 50 L. J. P. C 58.

NEW SOUTH WALES—*continued.*

47. Crown lands—Grants to minors—Alienation Act, 1861, s. 13—" Any person " not necessarily above 21.
O'Shanassy v. *Joachim*, L. R. 1 App. 82; 45 L. J. P. C. 43.

48. Crown lands—Alienation Act of 1861, s. 18—Conditional purchase by trustee—Illegal agreement.
Barton v. *Muir*, L. R. 6 P. C. 134; 44 L. J. P. C. 19.

49. Crown Lands Alienation Act, s. 5—Dedication of lands as " permanent common "—Common of pasturage not created—Public enjoyment within operation of Public Parks Act.
Municipal Council of Sydney, Agricultural Society of New South Wales, and Sydney Driving Park Club v. *Attorney-General for New South Wales and Milroy*, L. R. (1894) A. C. 444; 63 L. J. P. C. 116.

50. Crown Lands Alienation Act, 1861, s. 22—48 Vict. No. 18, ss. 2 (sub-s. b), 42—Right to make additional purchases—Right existing at date of repealing statute to take advantage of provisions of statute repealed not a " right accrued " within meaning of usual saving clause.
Abbott v. *Minister for Lands*, L. R. (1895) A. C. 425; 64 L. J. P. C. 167.

51. Crown Lands Act of 1884 (48 Vict. No. 18), ss. 76, 78—Pastoral lease of leasehold area—Rent runs from date of notification.
Reid v. *Garrett*, L. R. 14 App. 94; 58 L. J. P. C. 74.

52. Crown Lands Act of 1884, ss. 78, 81—Appraisement by Local Land Board—Minister for Lands has no power to raise yearly rental or yearly licence fee in respect of leasehold and resumed areas of pastoral holding—Appraisement to be remitted to Board for revision.
Alison v. *Burns*, L. R. 15 App. 44; 59 L. J. P. C. 34.

53. Crown lands—Conditional purchase of—Forfeiture—Validity of regrant of by Crown—Crown Lands Act, 1884, c. 4, s. 21, sub-s. 3.
Tearle v. *Edols*, L. R. 13 App. 183; 57 L. J. P. C. 58.

54. Crown Lands Act, 1884, ss. 13 (sub-s. 2), 14, 18, 19, 20, 39—Power of Minister to declare forfeiture of conditional purchases—Finality of finding of Land Board.
Attorney-General for New South Wales v. *Walters*, L. R. (1898) A. C. 460; 67 L. J. P. C. 36.

55. Crown Lands Acts, 1884, s. 102; 1895, ss. 10, 11, 13—Application for additional conditional purchase—Respondent barred under one Act, premature under other—*Colless's Case*, *post*, 60, followed.
Minister for Lands v. *Harrington*, L. R. (1899) A. C. 408; 68 L. J. P. C. 60.

56. Crown Lands Acts, 1884, ss. 20, 26; 1889, ss. 5, 8 (sub-s. 6)—Inquiry as to falsity of statements by applicant for conditional purchase—Findings of fact by Land Appeal Court conclusive—Power of that court to rehear—Jurisdiction of Supreme Court confined to deciding questions of law—Power of Minister for Lands to order inquiry to be held at any place he deems fit.
Minister for Lands v. *Wilson*, L. R. (1901) A. C. 315.

NEW SOUTH WALES—*continued.*

57. Crown Lands Acts, 1889, s. 33; 1891, s. 3—Non-renewal of licences—Gazetting of by mistake—Power of Minister to reverse—Effect of reversal.
O'Keefe v. *Malone*, L. R. (1903) A. C. 365; 72 L. J. P. C. 73.

58. Crown Lands Act of 1889, s. 8, sub-s. 6—Special case stated by Land Court—Duty of Supreme Court to hear and return decision.
Hill, Clark & Co. v. *Dalgety & Co.*, L. R. (1898) A. C. 343; 67 L. J. P. C. 67.

59. Crown Lands Acts—Reference by Land Appeal Court to Supreme Court—Decision of Supreme Court conclusive.
Garnsey v. *Flood*, L. R. (1898) A. C. 687; 67 L. J. P. C. 131.

60. Crown Lands Act, 1895, ss. 5, 11—Resumed area—Leasehold area—Preferential occupation licence.
Colless v. *Minister for Lands*, L. R. (1899) A. C. 90; 68 L. J. P. C. 9.

61. Crown leases—Registration of title *pendente lite*—Effect of regulations under statute—Crown lands, distribution of.
Blackwood v. *London Chartered Bank of Australia*, L. R. 5 P. C. 92; 43 L. J. P. C. 25.

62. Crown lease—Deduction from taxable income of fair rental value of leasehold premises and improvements for the year—Not allowed—Land and Income Tax Assessment Act, 1895, s. 28, sub-s. 1.
Commissioners of Taxation v. *Antill*, L. R. (1902) A. C. 422; 71 L. J. P. C. 81.

63. Customs Regulations Act of colony, 1845—Customs Duties Act, 1871—Omission in bill of entry—Forfeiture.
Prince v. *Reg.*, L. R. 5 P. C. 1; 43 L. J. P. C. 14.

64. Debt—Attribute of locality possessed by—Simple contract debt localised where debtor resides—Specialty debt where specialty at death of creditor—Simple contract debt merged in specialty debt—Ground of liability to probate duty of an asset under Stamp Duties Acts.
Commissioner of Stamps v. *Hope*, L. R. (1891) A. C. 476; 60 L. J. P. C. 44.

65. Debt, payment of—Knowledge of debtor's insolvency by creditor at the time—Payment invalid—25 Vict. No. 8.
National Bank of Australasia v. *Morris*, L. R. (1892) A. C. 287; 61 L. J. P. C. 32.

66. Debtor and creditor—Agreement to advance moneys—Sugars to be placed in lender's hands for sale on commission—Advances to be repaid out of proceeds—Insolvency of borrower—Assignment to trustees for benefit of creditors—Sugars purchased by agents of borrower—No lien on sugars for lender.
Dean v. *Byrnes*, 3 Moo. P. C. C., N. S., 92.

67. Dedication of land to public purposes by the Crown—Presumption from user—Crown Lands Alienation Act, 1861, ss. 3, 5—5 & 6 Vict. c. 36.
Turner v. *Walsh*, L. R. 6 App. 636; 50 L. J. P. C. 55.

NEW SOUTH WALES—*continued.*

68. Distress for rent, prohibition of after sequestration of tenant's estate —Rights of holder of bill of sale of goods distrained—Rights of landlord—Insolvent Act, 5 Vict. No. 17, s. 41.
Railton v. *Wood*, L. R. 15 App. 363; 59 L. J. P. C. 84.

69. Domicile—*Animus manendi.*
Platt v. *Attorney-General of New South Wales*, L. R. 3 App. 336; 47 L. J. P. C. 26.

70. Evidence, admissibility of—Written agreement—Parol evidence as circumstances of signature, after agreement concluded, of document no part of agreement—No contradiction or variation of written agreement.
Bank of Australasia v. *Palmer*, L. R. (1897) A. C. 540; 66 L. J. P. C. 105.

71. Factor, advances by—Revocability of authority to sell.
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72. Glebe lands let on building leases—Non-exemption from land tax—Land and Income Tax Assessment Act, 1895, s. 11, sub-s. 5.
Commissioners of Taxation v. *Trustees of St. Mark's Glebe*, L. R. (1902) A. C. 416; 71 L. J. P. C. 99.

73. Government of the colony, liability of to be sued in tort—39 Vict. No. 38.
Farnell v. *Bowman*, L. R. 12 App. 643; 56 L. J. P. C. 72.

74. Guarantee—Bond—Former invalid—Condition of latter not controlled by recital not plainly inconsistent therewith.
Australian Joint Stock Bank v. *Bailey*, L. R. (1899) A. C. 396; 68 L. J. P. C. 95.
Guarantors: see *ante*, 13.
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75. Horse race—Deposit of stake to abide event—Jockey Club rules—Finding of jury—New trial.
Dines v. *Wolfe*, L. R. 2 P. C. 280; 5 Moo. P. C. C., N. S., 382.

76. Income taxable—Land and Income Tax Assessment Act, 1895, ss. 27, 28 (sub-s. 1)—Deduction of expenses in producing income.
Commissioners of Taxation v. *Teece*, L. R. (1899) A. C. 254; 68 L. J. P. C. 8.

77. Income Tax Act, 1895, s. 15, sub-ss. 3, 4—Income in part derived from extraction of ore from soil of colony, and from conversion in colony of crude ore into merchantable product—Assessable notwithstanding finished products sold exclusively outside colony.
Commissioners of Taxation v. *Kirk*, L. R. (1900) A. C. 588; 69 L. J. P. C. 87.

78. Indemnity, contract of—Estoppel—Evidence as to abandonment of claim.
Chadwick v. *Manning*, L. R. (1896) A. C. 231; 65 L. J. P C. 42.

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79. Interim injunction—Appeals from discouraged—Trespass—Mining on Private Lands Act, 1894, ss. 8, 13.
Croudace v. *Zobel*, L. R. (1899) A. C. 258; 68 L. J. P. C. 47.

80. Joint gold-mining lease—Notice of abandonment by joint-lessee to co-lessee, what amounts to—Acceptance by co-lessee of abandonment by subsequent working of lease out of own resources—No right in retiring lessee or his official assignee to share of price realized by sale of lease.
Palmer v. *Moore*, L. R. (1900) A. C. 293; 69 L. J. P. C. 64.

81. Judicial officers—Power of Governor and Council to amove—Notice of charge, opportunity to answer—22 Geo. 3, c. 75.
Willis v. *Sir Geo. Gipps*, 5 Moo. P. C. C. 379.

82. Land, interest in—Real Property Act, ss. 117, 122—Rent-charge or annuity, equitable interest in—Certificate of title negligently granted—Right of beneficiaries to compensation under Act, enforceable notwithstanding trustees' right barred.
Williams v. *Papworth*, L. R. (1900) A. C. 563; 69 L. J. P. C. 129.

83. Land, purchase of—Adverse claim—Bond of indemnity by vendor—Possession by purchaser—Right to retain land and bond against claim.
Osborne v. *Eales*, 2 Moo. P. C. C., N. S., 100.

84. Land—Real Property Acts, 26 Vict. No. 9 and 41 Vict. No. 18—*Onus probandi* as between applicant and caveators in possession.
Solling v. *Broughton*, L. R. (1893) A. C. 556; 63 L. J. P. C. 21.

85. Land, resumption of—Irregular amendment of notified valuation—Costs of action for compensation—Public Works Act (26 of 1900), ss. 96, 99.
Minister of Public Works v. *Hart*, L. R. (1904) A. C. 259; 73 L. J. P. C. 53.

86. Lands Act Amendment Act, 1875, s. 31—Construction of.
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87. Lands Acts 1861, 1875, 1880, and 1884—Reserved lands—Revocation of reserve—Rights of improver—Sale by appraisement.
Ricketson v. *Barbour*, L. R. (1893) A. C. 194; 62 L. J. P. C. 55.

88. Lands, application to bring under Real Property Act, 26 Vict. No. 9—Caveat—Waiver of lapse of by obtaining order that caveator should file case.
Wilson v. *McIntosh*, L. R. (1894) A. C. 129; 63 L. J. P. C. 49.

89. Lands, descent of—Devolution of wife's realty to her next of kin after expiration of husband's tenancy by the curtesy—26 Vict. No. 20, ss. 1, 2.
Plomley v. *Shepherd*, L. R. (1891) A. C. 244; 60 L. J. P. C. 18.

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90. Lands, purchase of at public auction—Subsequent mortgage of by vendor by registered deeds—Knowledge of mortgagee—No priority in mortgagee taking subject to purchase—7 Vict. No. 16, ss. 11, 22—22 Vict. No. 1, s. 18.
Sydney and Suburban Mutual Building and Land Investment Association v. *Lyons*, L. R. (1894) A. C. 260; 63 L. J. P. C. 108.

91. Legislation—9 Geo. 4, c. 83—Appointment of Legislative Assembly for New South Wales—Authority of Governor with their concurrence to make laws and ordinances not repugnant to laws of England—Act of New South Wales, 8 Will. 4, No. 3—Introduction of Statute of Limitations, 3 & 4 Will. 4, c. 27, into New South Wales—Demise of Crown—Effect of, on authority of Governor and Legislative Assembly.
Is Ireland beyond the seas in reference to New South Wales?
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Devine v. *Holloway*, 14 Moo. P. C. C. 290.

92. Legislative Assembly—Power of suspension—Action of trespass by suspended member against Speaker—Pleas and justification.
Barton v. *Taylor*, L. R. 11 App. 197; 55 L. J. P. C. 1.

93. Legislature, powers of—11 Vict. No. 13, s. 1—Costs of action of slander.
Harris v. *Davies*, L. R. 10 App. 279; 54 L. J. P. C. 15.

94. Legislature, powers of—Customs Regulation Act of 1879, s. 133—Duties levied under Order in Council.
Powell v. *Apollo Candle Co.*, L. R. 10 App. 282; 54 L. J. P. C. 7.

95. Lien—By implication of law or by express contract—Freight, lien for—Special contract for payment not freight—Lien for not supplied by court by implication—Evidence of usage to affect written contract when admissible—*How* v. *Kirchner*, 11 Moo. P. C. C. 21, upheld.
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96. Limitation Act, No. 3 of 1837—Cessation of to run against lawful owner on intruder relinquishing possession.
Agency Co. v. *Short*, L. R. 13 App. 793.

97. Limitations, Statute of—Equity Courts, adoption of rules by—Underground and secret trespass—Champerty—Lessees under lease executed before discovery of trespass—Indemnity by of respondents against costs of suit on paying lessees 92½ per cent. of amount recovered—Not champertous.
Bulli Coal Mining Co. v. *Osborne*, L. R. (1899) A. C. 351; 68 L. J. P. C. 49.

98. Malicious prosecution—Statutory offence—Sale of stock independently of intent to defraud without written consent of licnee—*Mens rea*—11 Vict. No. 4, s. 7.
Bank of New South Wales v. *Piper*, L. R. (1897) A. C. 383; 66 L. J. P. C. 73.

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99. Marine insurance—Open policy—Declaration of goods by insured, incidence of to every such contract—Contracts of marine insurance to be made in writing (*semble*).
Davies v. *National, &c., Insurance Co. of New Zealand*, L. R. (1891) A. C. 485; 60 L. J. P. C. 73.

100. Marriage settlement—Limitation in favour of volunteers—Subsequent conveyance by settlor—Defeat of original limitation by.
De Mestre v. *West*, L. R. (1891) A. C. 264; 60 L. J. P. C. 66.

101. Military service—Contract with Colonial Government for—On behalf of Crown—Payments by Imperial Government in part discharge of payments due under contract—Colonial Government entitled to benefit of.
Williams v. *Howarth*, L. R. (1905) A. C. 551; 74 L. J. P. C. 115.

102. Mining Act, 1874, ss. 13, 25—Suspension of pastoral lease of Crown lands by Governor—Compensation to lessee—Return or remission of rent—Inadequacy—Lessor's right.
Cook v. *Ricketson*, L. R. (1901) A. C. 588; 70 L. J. P. C. 113.

103. Mortgage of branded sheep and cattle on run—Sheep afterwards brought on run not included.
Webster v. *Power*, L. R. 2 P. C. 69; 37 L. J. P. C. 9.

104. Mortgage of sheep run and sheep—Default in payment on demand—Demand by agent—Opportunity of inquiring into truth of agency—Illegal seizure by mortgagee—Trespass—Damages.
Moore v. *Shelley*, L. R. 8 App. 285; 52 L. J. P. C. 35.

105. Mortgage by deposit of title-deeds—Subsequent absolute conveyance—Insufficiency of collateral evidence to overcome presumption in favour of conveyance being absolute.
Barton v. *Bank of New South Wales*, L. R. 15 App. 379.

106. Mortgage—Foreclosure—Bank Incorporating Acts.
Bank of New South Wales v. *Campbell*, L. R. 11 App. 192; 55 L. J. P. C. 31.

107. Mortgage—Proviso of redemption, construction of—Reconveyance to be of mortgagors' original estates.
Plomley v. *Felton*, L. R. 14 App. 61; 58 L. J. P. C. 50.

108. Mortgage, setting aside equitable—Act of New South Wales, 12 Vict. No. 1—Colonial Act, 5 Vict. c. 17, s. 8—Insolvency of mortgagor—Strict proof—Costs of appeal to abide ultimate result of proceedings on remit.
Jones v. *McKenzie*, 13 Moo. P. C. C. 1.

109. Mortgagee, assignee of—Rights of—Right of mortgagor to reconveyance—Promissory notes as collateral security—Severance of debt from security.
Walker v. *Jones*, L. R. 1 P. C. 50; 35 L. J. P. C. 30.

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110. Municipal institutions, establishment of in New South Wales—Colonia Act, 22 Vict. No. 13, ss. 1, 2—Petition to Governor to proclaim municipality—Proclamation describing district differently, incorporating other lands—Validity of.
Lapse of time for appeal—Construction of proclamation under Act as to formation of municipality—Leave—Terms of.
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111. Municipalities Act, 1867, s. 153—Bye-law under for regulating interment of dead—Prohibition by of interments in particular cemetery—Validity of—Unreasonableness, setting aside bye-laws for.
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112. New trial—Principles on which granted by Appeal Court—Verdict against judge's opinion—Costs of rule—Costs of appeal.
Humphrey v. *Nowland*, 15 Moo. P. C. C. 343.

113. New trial—Libel—Order for discharged, there being evidence on which jury could find verdict—"Ananias"—Extravagant use of word—Intention for jury.
Australian Newspaper Co. v. *Bennett*, L. R. (1894) A. C. 284; 63 L. J. P. C. 105. Cp. Queensland 14, 15.

114. Nonsuit, when right—Fire policy—Compliance with conditions in.
Hiddle v. *National Fire and Marine Insurance Co. of New Zealand*, L. R. (1896) A. C. 372; 65 L. J. P. C. 24.

115. *Nullum tempus* Act (9 Geo. 3 c. 16) applies to colony—Lands never dealt with by Crown—9 Geo. 4 c. 83.
Attorney-General for New South Wales v. *Love*, L. R. (1898) A. C. 679; 67 L. J. P. C. 84.

116. Parliamentary allowances to members—53 Vict. No. 12, s. 2—Application of to every successive Legislative Assembly of the colony.
Attorney-General for New South Wales v. *Rennie*, L. R. (1896) A. C. 376; 65 L. J. P. C. 52.

117. Partnership—Purchase of share in—Agreement as to land forming partnership property—Paying off mortgage during negotiations—Failure of partnership—Sale of land—Right to account of sale money—Rate of interest.
Gordon v. *Scott*, 12 Moo. P. C. C. 1.

118. Petition of Right—Petition to Governor—Reference by to Supreme Court—Nature of action on reference—20 Vict. No. 15*—Invalidity of contract for reason not apparent on face of declaration—Not to be raised on application for new trial—Measure of damages—Appeal allowed without security for costs.
Robertson v. *Dumaresq*, 2 Moo. P. C. C., N. S., 66.

119. Pleading—Accord and satisfaction—Demurrer.
Barclay v. *Bank of New South Wales*, L. R. 5 App. 374.

120. Pleading—Assault—Criminal information by Attorney-General against member of Legislative Assembly—Within precincts of House—Contempt of Assembly—Surplusage.
Attorney-General of New South Wales v. *Macpherson*, L. R. 3 P. C. 268.

* Cp. *Re Holmes*, 2 Johns. & H. 527.

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121. Principal and agent—Agent to pass goods through Custom House—Not liable for not expediting clearance of goods within twenty-four hours to avoid payment of new duty.
Commonwealth Portland Cement Co. v. *Weber, Lohmann & Co.*, L. R. (1905) A. C. 67; 74 L. J. P. C. 25.

122. Principal and agent—Authority of bank manager to prosecute to be proved, not presumed—Liability of bank for malicious prosecution by manager—Appealable sum includes interest adjudged on verdict.
Bank of New South Wales v. *Owston*, L. R. 4 App. 270; 48 L. J. P. C. 25.

123. Principal and agent—Liability for engagements on account of business—Assignment of property by agents in discharge of business debts—Pleading—Technical rules not to prevent justice being done—Insolvency of party to the suit—Interest in own right and also as trustee—Prosecution of appeal as trustee—Leave to appeal granted on petition, though no provision for appeal in Charter of Justice or Act of Parliament creating the court.
Marchioness of Bute v. *Mason*, 7 Moo. P. C. C. 1.

124. Principal and surety—Release of co-surety—Discharge.
Mercantile Bank of Sydney v. *Taylor*, L. R. (1893) A. C. 317.

125. Principal and surety—Suretyship entered into on faith of mortgage by principal debtor to creditor—Sale of part of mortgaged property—Non-payment of price by purchaser—Consent of mortgagee—Due course of management—Effect on sureties' liability.
Taylor v. *Bank of New South Wales*, L. R. 11 App. 596; 55 L. J. P. C. 47.

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126. Public Works Act, 1900, s. 116, sub-s. 2 (b)—Inadequate tender of compensation—Costs of action, arbitration and award.
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127. Public Works Act, 1900, s. 131—Compulsory acquisition of land—Prohibition against taking part only when owner willing and able to sell whole—Application to both methods of acquisition under Act—Notification in Gazette, notice to parties.
Williams v. *Permanent Trustee Co. of New South Wales*, L. R. (1906) A. C. 249; 75 L. J. P. C. 48.

128. Railway—Agreement to construct jointly—Rights of joint-owners.
Caledonian Coal Co. v. *Seaham Colliery Co.*, L. R. (1901) A. C. 554; 70 L. J. P. C. 105.

129. Rateability, exemption of land from—Municipalities Act of 1867, s. 163—Construction of—Point not raised in court below not open to be raised for first time before Privy Council.
Council of Borough of Randwick v. *Australian Cities Investment Corporation*, L. R. (1893) A. C. 322; 62 L. J. P. C. 116.

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130. Real estate of Intestates Distribution Act, 1862 (New South Wales) —Introduction by of new rule of succession to real estate—Rule applicable to all cases, not confined to those where dead owner has actually left an heir.
Wentworth v. *Humphrey*, L. R. 11 App. 619; 55 L. J. P. C. 66.

131. Roads and drains—Liability of municipalities for non-repair of—Special damage—Acts No. 13 of 1858 and No. 12 of 1867.
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Distinguished in next case as being really case of misfeasance not nonfeasance.

132. Roads, public, non-repair of—No action for damages—43 Vict. No. 3, s. 67.
Municipal Council of Sydney v. *Bourke*, L. R. (1895) A. C. 433; 64 L. J. P. C. 140.

133. Scots church—Land granted to minister by colonial government—Synod—Dismissal of minister—Refusal to recognize synod's authority—Suits to remove ministers and other trustees from trust—Interest to maintain suit—Public authority—Lapse of time—Acquiescence—Colonial synod's authority.
Lang v. *Purves*, 15 Moo. P. C. C. 389.

134. Sheriff—False return—Misfeasance—Damages—Liability to attachment.
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135. Ship, master of—Authority to sell cargo—Necessity for sale, inability to communicate with owners—*The Bonaparte*, 8 Moo. P. C. C. 459, and *The Cargo ex Hamburg*, 2 Moo. P. C., N. S., 289, followed.
Australasian Steam Navigation Co. v. *Morse*, L. R. 4 P. C. 222; 8 Moo. P. C. C., N. S., 482.

136. Shipowner's lien for freight—Contract at variance with—No lien where sum claimed not properly freight—Delay in prosecuting appeal—No order on motion to dismiss for want of prosecution.
How v. *Kirchner*, 11 Moo. P. C. C. 21. See *ante*, 95.

137. Specific performance—Hardship on defendant—Damage to property —Absence of advice and assistance—Ignorance of nature and consequences—Remedy at law.
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138. Stamp Duties Acts, 1880, 1886—Probate duty paid under protest—Application for refused—Delay of nine years—Application refused.
Broughton v. *Commissioner of Stamp Duties*, L. R. (1899) A. C. 251; 68 L. J. P. C. 36.

139. Stamp Duties Act, 1898, s. 49, sub-s. 2A (a)—Property subject to special, as distinguished from general, power of appointment in deceased—Not touched by mere general language in statute.
Commissioner of Stamp Duties v. *Stephen*, L. R. (1904) A. C. 137; 53 L. J. P. C. 9.

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140. Statute of Frauds, 29 Car. 2, c. 3, s. 17—9 Geo. 4, c. 14, s. 7—Introduction of into New South Wales by Colonial Act, 4 Will. 4, No. 17—Note or memorandum of bargain—Liability of advertiser of reward for information—No name in advertisement—Judgment reversed, amendment of pleadings—New trial—Costs.
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141. Statute of Limitations, 3 & 4 Will. 4, c. 27—Adoption of in colony by 8 Will. 4, No. 3—Tenants at will—Heir at law beyond seas at time of accrual of right of entry—Grant of lease by lessee of tenant at will—Lessor reversioner expectant on term of years.
Hogan v. *Hand*, 14 Moo. P. C. C. 310.

142. Statute of Limitations, 3 & 4 Will. 4 c. 27, ss. 2, 7, 34—Act of New South Wales, No. 3 of 1837.
Day v. *Day*, L. R. 3 P. C. 751; 40 L. J. P. C. 35.

143. Street—Diversion of into tramway—Not a taking of property within Public Works Act, 1888—Sydney Corporation Act, 1879—Vesting public ways in municipal council—Object of incidental to exercise of municipal authority—No property right created.
Municipal Council of Sydney v. *Young*, L. R. (1898) A. C. 457; 67 L. J. P. C. 40.

144. Substituted service of petition on alleged lunatic—When dispensed with—Service on Master in Lunacy—Examination of lunatic—When dispensed with—Lunacy Act, 1898, ss. 106 (sub-s. 2), 110.
In re McLaughlin, L. R. (1905) A. C. 343; 74 L. J. P. C. 70.

145. Sydney Corporation Act, 1879, s. 139—Cattle intended for slaughter, yarded or brought for sale to saleyards, power to charge fees on—Bye-law, authorizing charges on cattle brought to private yards and there slaughtered, *ultra vires*.
Municipal Council of Sydney v. *Austral Freezing Works*, L. R. (1905) A. C. 161; 74 L. J. P. C. 33.

146. Telegrams—Mistake—Action on contract—*Onus probandi*.
Falck v. *Williams*, L. R. (1900) A. C. 176; 69 L. J. P. C. 17.

147. Trade-marks—"Maizena"—Registered and enforced in other countries—User of in colony to describe article but not their own manufacture for quarter of century—Word *publici juris* no longer registrable as trade-mark—No deceptive use of labels on packets—No restraint on user of word—28 Vict. No. 9.
National Starch Manufacturing Co. v. *Munn's Patent Maizena and Starch Co.*, L. R. (1894) A. C. 275; 63 L. J. P. C. 112.

148. Trade names—"Flaked oatmeal"—Term of ordinary description—Defendants' user not proved to pass off their goods as plaintiff's—Damages for grant of interim injunction.
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149. Tramways, right to run steam motors on—New South Wales Act, 43 Vict. No. 25, ss. 3, 5.
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150. Trustee, new, appointment of by Master—Vesting without subsequent order.
Plomley v. *Richardson and Wrench*, L. R. (1894) A. C. 632; 64 L. J. P. C. 18.

151. Vendor and purchaser—Title of purchaser from self as trustee for sale—Inequitable to compel acceptance of—Beneficiaries' consent, clear affirmative evidence of necessary—Intermediate sale to third party not available unless completed—Executory contract to purchase—Trustee party to as vendor can't adopt for own benefit.
Williams v. *Scott*, L. R. (1902) A. C. 499; 69 L. J. P. C. 77.

152. Verdict of jury not to be disturbed unless one a jury, viewing whole of evidence reasonably, could not properly find.
Phillips v. *Martin*, L. R. 15 App. 193.

153. Verdict of jury properly found must stand.
Commissioner for Railways v. *Brown*, L. R. 13 App. 133; 57 L. J. P. C. 72.

154. Voluntary gift for charitable purposes—Not covinous within 27 Eliz. c. 4—Not avoided by subsequent conveyance for value.
Ramsay v. *Gilchrist*, L. R. (1892) A.C. 412; 61 L. J. P. C. 72.

155. Voluntary conveyance on trust to sell and pay debts, then on trust for wife and children—Revocability of—Validity of as against creditors—Validity of as against subsequent purchaser for value—Sale not by voluntary grantor—13 Eliz. c. 5—27 Eliz. c. 4—New South Wales District Courts Act, 1858 (22 Vict. No. 18), ss. 78, 79.
Godfrey v. *Poole*, L. R. 13 App. 497; 57 L. J. P. C. 78.

156. Wagering contract—Right to recover deposit from stakeholder—14 Vict. No. 9, s. 8—Colonial Acts in same terms as Imperial Acts—Construction of.
Trimble v. *Hill*, L. R. 5 App. 342; 49 L. J. P. C. 49.

157. Water rate—Lands without prescribed limit forming one holding with lands within limit—Not rateable—Act XXVII. of 1892, s. 35.
Hunter District Board v. *Newcastle Coal Co.*, L. R. (1896) A.C. 82; 65 L. J. P. C. 1.

158. Water, right to use of flowing—Ownership of soil covered by water not necessary—Grant by Crown of land to R.—Subsequent grant of other land to L., reserving right to resume certain quantity of water and land—Acquisition of R.'s land by L.—Resumption by Crown—Effect on right of L. to use water flowing past what was originally R.'s land.
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159. Wharfage rates—Right to levy on all wharves vested in Commissioners—Sydney Harbours Trust Act, s. 68.
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160. Will—Alternative devise—Vested interests—Divesting.
Penny v. *Commissioner for Railways*, L. R. (1900) A. C. 628; 69 L. J. P. C. 113.

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161. Will, construction of—Sense attached by testator to expressions of—Legal meaning of technical expressions—Main purpose and intention of testator—Inconsistent expressions—Supplying defects.
Towns v. *Wentworth*, 11 Moo. P. C. C. 526.

162. Will, construction of—Proviso—"Shall be born in my lifetime" construed as words of futurity.
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163. Will, construction of—Survivors and survivor—Partial intestacy.
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164. Will—Devise of residue of real estate—Subsequently acquired real estate—Subsequent codicil revoking previous devise and making new devise—No mention of real estate acquired between will and codicil—Intestacy as to.
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165. Will.—Direction to accumulate—Rents and royalties from mining leases—Tenants for life, rights of.
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166. Will—Residuary clause—Preferential trusts—Changes not duplicated by.
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167. Wills, law of before adoption in 1840 of English Wills Act—Words of gift without limitation—Life estate only conveyed.
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1. Agricultural Reserves Act of 1863, s. 8—Leasing Act of 1866—Lease—Forfeiture—Waiver—Rent received under protest.
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2. Appeal, right of to H.M. in Council—Taking away of not retrospective—Suit pending in Supreme Court when Commonwealth Judiciary Act, 1903, passed—Decision after—Right vested in appellants at date of Act's passing not taken away.
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3. Charitable gift, validity of—Effect of incorporation—Religious, Educational, and Charitable Institutions Act of 1861, s. 3.
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4. Crown Lands Alienation Act, 1868, ss. 46, 51, 57—Grant in fee refused—False declaration by applicant for lease.
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5. Crown Lands Alienation Act, 1868, ss. 51 (sub-s. 5), 55—Residence—Abandonment—Forfeiture—Judicial inquiry by Commissioners.
Smith v. *Reg.*, L. R. 3 App. 614; 47 L. J. P. C. 51.

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6. Foreign debts charged on property in the colony—Interest in such property an asset in colony within the Dividend Duty Act, 1890 (54 Vict. No. 10), s. 9, to extent of value of incumbrance and taking into account collateral securities elsewhere than in colony.
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7. Goldfields Act, 20 Vict. c. 29—Rules of 1866—Ordinary quartz claim—Ownership of claim and incidents thereof—Discoveries of claim in "new locality."
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8. Goldfields Act, 1874, ss. 9, 11—Holder of miners' rights—Rights of Crown lessees—Interference by former with latter.
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9. Government compulsory bailees for hire—Obligation of as such same as that of skilled storekeeper acquainted with the risks—Decisions that public bodies not liable to individuals for nonfeasance not applicable where public body under contract with individual for remuneration—Navigation Act, 1878 (41 Vict. No. 3)—Customs Act, 1873 (37 Vict. No. 1), s. 103.
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10. Insolvent Act of New South Wales, 5 Vict. No. 17, s. 8—Fraudulent preference—Order in Council, June 30, 1860, appeal to Her Majesty in Council from Queensland—Special leave to appeal from judgment appealed from to Supreme Court of New South Wales before separation.
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11. Insurers, remedies of—Payment under policy by—Subrogation—Assignment of insured's right—40 Vict. c. 84, s. 5, sub-s. 6 (identical with Eng. Jud. Act, 1873).
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12. Legislative Assembly, disqualification for sitting and voting as member of—Principal and agent—Contract with local government by agent contrary to express direction of principal—Non-liability of principal to government—Constitution Act, 1867, ss. 6, 7.
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13. Legislative Council, vacating of seat in—Constitution Act of 1867, ss. 23, 24.
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14. New trial for verdict against weight of evidence, when granted—Unreasonable and almost perverse for jury to return verdict—Malicious prosecution—Reasonable and probable cause—To be determined by judge on facts found by jury.
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15. New trial—Order for discharged—Evidence both ways—Verdict one which jury could reasonably find.
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16. Probate—Legatee preparing will in own favour—Findings of jury—New trial.
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17. Succession and Probate Duties Act, 1892, s. 4—English Succession Duty Act, 1853, s. 2, identical with—Colonial enactment to be read in sense affixed to English Act by English decisions—Limitation of Statute to wills of persons domiciled in colony, whether assets locally situate therein or not—Movables locally situate in Queensland—Testator domiciled in Victoria—Amendment Act of 1895, s. 2, not retrospective in operation.
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1. Bailment—Sale—Difference between.
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2. Banking Co.—22 & 23 Vict. 1859, ss. 6, 7—Power to hold lands as security for debt.
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3. Bill of exchange—Insolvency of acceptor in Australia—Right to re-exchange of holder in England.
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4. Insolvent Act of 1860, Division VI.—Assignee in bankruptcy—Transfer of shares—Option of assignee to accept or reject shares—Liability of transferor.
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5. Insurance, contract of—Receipt of premiums—Specific appropriation.
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6. Insurance, marine—Cargo—"At and from port"—Commencement of risk—Insurable interest.
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7. Joint Stock Co.—Unpaid capital, power to mortgage.
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8. Land, interest in—Equitable right in passed by unregistered deed—Certificate of title obtained by fraud—Act 22 of 1861, s. 39.
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9. Land—Orders for allotment of by Government—Survey—Statutory obligation—Refunding purchase-money.
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10. Lease—Covenant not to assign without consent of lessor—Application of to reassignment to original lessee—Injunction—Australian system of land registry.
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11. Leases by Governor—Not records—Cannot be quashed by *sci. fa.*—21 Vict. No. 5, s. 13—Nature of *sci. fa.*—Not issuable out of Supreme Court in South Australia—Proper remedy information in Chancey or writ of intrusion—*Reg.* v. *Clarke* commented on.
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12. Registration Act, 5 Vict. No. 8, s. 3—Priorities—Registered title affected by prior unwritten equity.
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13. Statute—Construction of—Act No. 4 of 1855-6—Security for loan—Banking Co.—Charter—Principal and agent—Preferential lien on wool—Trover.
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14. Statute—Repeal and re-enactment of in amended form—No necessary presumption of intention to extend operation to classes of persons not previously subject to—Fencing Act, No. 6 of 1865—Not applicable to waste lands held on lease from Crown for pastoral purposes.
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15. Succession Duties Act, 1893, ss. 16, 27—Covenant to pay—Complete ownership of debt—Non-testamentary disposition of property—Death of testator more than three months after—"Intent to evade payment of duty hereunder"—No duty payable.
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1. Administration, grant of, vesting of title by as from date of death—Rights of husband as wife's administrator in respect of his voluntary conveyance to her—Administration Act of 1872.
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2. Administration and Probate Duty Act, 1890, s. 115—"Intent to evade payment of duty"—Colourable transactions only affected—Desire of transferor to avoid liability to duty not sufficient to prove "intent to evade" if transfer complete—Debt, specialty in New South Wales, simple in Victoria, where testator and debtor resided and were domiciled—Asset and liable to duty in Victoria.
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3. Agreement, memorandum of, construction of—"His share" equivalent to "share of firm."
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4. Aliens—No legal right in enforceable by action to enter British territory—No obligation on collector of customs to accept payment for Chinese immigrants arriving in vessel bringing greater number than allowed by law—Chinese Act, 1881, s. 3.
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6. Attorney's bill, power of Court to deliver—Victorian Common Law Procedure Act, s. 396.
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7. Bailment—Bank—Deposit by customer for safe keeping—Gratuitous bailees—Robbery by servant of—Gross negligence, what—Evidence—Nonsuit.
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8. Banker and customer—Transfer of money from company's account to managing director's overdrawn private account—Rights of banker acting in good faith without notice.
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9. Banker's lien—Accounts—Interest—Securities in respect of specific sums.
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10. Bill of exchange—Transmission for presentment for acceptance—Delay of drawees Negligence of agents in obtaining acceptance—Respectability of drawees.
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11. Book debts—Invalidity of unregistered assignment of not extended to covenants and recitals—Unless registered assignment follows—Book Debts Act, 1896, s. 3.
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13. Company—Incorporation of—Statute—Presumption of compliance with rules—Power of Supreme Court to issue *certiorari*—Court of Mines—Loan to joint stock company—Duty to see proceedings of company regular—Winding up registered company.
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14. Company—Power of directors to borrow and mortgage—Ratification by company of particular act of directors in excess of authority—Such ratification not extension of future authority.
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15. Company—Shares—Invalid forfeiture—Waiver—Acquiescence.
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16. Companies Act, 1890, s. 384—Trustees' powers of investment—Deposits with banks not within.
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20. Customs Act of the Commonwealth of Australia, 1901, ss. 127, 192—Using ship's stores in territorial waters or in port—Duty imposed—Breaking seals on ship's goods on high seas and entering Australian port with seals broken—Imposition of penalty for not *ultra vires*—Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), s. 5.
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21. Drain—Liability of municipal authorities for insufficiency—Exercise of statutory powers—Capacity ofdrain originally sufficient—Negligence.
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23. Executors, statement by—Debts chargeable on foreign assets to be included only so far as in excess of the security—To extent of that excess chargeable on Victorian assets—Administration and Probate Act, 1890 (54 Vict. 1060), s. 97, sub-s. 2.
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24. Fire insurance—Policy—Condition of avoidance—Reasonableness—Specification of stock-in-trade.
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25. Foreign attachment—Garnishee parting with property.
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26. Fraud, contracts obtained by—Voidable, not void.
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27. Income Tax Act, 1895, ss. 5, 7 (e)—Proceeds from money lent on security of land in Victoria—Exemption.
England v. *Webb*, L. R. (1898) A. C. 758; 67 L. J. P. C. 120.

28. Income Tax Act, 1895, ss. 5, 10—Investments in colony by company not trading in colony—Taxable income.
Scottish Provident Institution v. *Commissioner of Taxes*, L. R. (1901) A. C. 340; 70 L. J. P. C. 50.

29. Insolvency—Joint debt—Separate security—5 Vict. No. 17.
Bank of Australasia v. *Flower*, 35 L. J. P. C. 13; L. R. 1 P. C. 27, *nom. Rolfe* v. *Flower*.

30. Insolvency statute of Victoria, 1865, s. 27—Official assignee, powers of—Release of equity of redemption to mortgagee—Corporation bound by agreement not under seal acted upon.
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31. Joint Stock Company—Agreement by majority of shareholders—Power to bind dissenting shareholders.
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32. Joint Stock Company Arrangement Act, Imperial, 1870—Inapplicable to Colonies—English company carrying on business in Victoria—Scheme of arrangement sanctioned by English court—Proceeding in foreign court—Not pleadable as defence by company in Victorian court to action by non-assenting creditor for full amount of claim.
New Zealand Loan and Mercantile Agency Co. v. *Morrison*, L. R. (1898) A. C. 349; 67 L. J. P. C. 10.

33. Jury *de medietate linguæ*—Right of challenge.
Levinger v. *Reg.*, L. R. 3 P. C. 282; 39 L. J. P. C. 49.

34. Land—54 Geo. 3, c. 15, s. 4—Real estates liable for simple contract debts—Liability enforced against owner of the property—Executor—*Fi. fa.* against—Sheriff cannot sell testator's land—Colonial Registration Act, 5 Vict. No. 21, s. 11—Priority—Valuable consideration.
Bullen v. *A'Beckett*, 1 Moo. P. C. C., N. S., 223.

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35. Land, lane on private—Rights of adjoining owners and occupiers—Owner in fee, right of to resume control and exclusive possession of lane—Melbourne Corporation Act (14 Vict. No. 20).
Moubray, Rowan and Hicks v. *Drew*, L. R. (1893) A. C. 295; 62 L. J. P. C. 81.

36 Land, forged transfer of—Fictitious transferee—Forged mortgage—Registration, effect of—Existence and identity of owner, authority of agent, validity of deed, must be ascertained by mortgagee—Transfer of Land Statute, 1866, No. 301.
Gibbs v. *Messer*, L. R. (1891) A. C. 248.

37. Land, transfer of—Statute—Certificates—Easement—Evidence to show abandonment—Non-user by respondent when easement not required coupled with user by appellant of portions of land subject to easement not proof of abandonment of entire right, inconclusive to prove abandonment of portions thereof.
James v. *Stevenson*, L. R. (1893) A. C. 162; 62 L. J. P. C. 51.

38. Land, transfer of—Statute—Registration of purchase from judgment debtor—*Alias* writ of *fi. fa.*
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39. Land Act, 1869, s. 98—Certificate of Board of Land and Works.
Winter v. *Attorney-General of Victoria*. L. R. 6 P. C. 378.

40. Land Act, 1869, s. 101—Notice of forfeiture.
Attorney-General of Victoria v. *Glass*, L. R. 6 P. C. 375.

41. Land Acts—Crown remedies and liability Statute, 1865—Forfeiture of lease—Waiver—Land Act of 1862, ss. 11, 21, 22, 23, 36, 126—Land Act, 1865, s. 7—Land Act, 1869, ss. 98, 101—Contract with Her Majesty.
Attorney-General of Victoria v. *Ettershank*, L. R. 6 P. C. 354; 44 L. J. P. C. 65.

42. Land Acts, 24 Vict. No. 117, 25 Vict. No. 145—Construction—Sale and occupation of Crown lands—Licence to occupy for year, subject to right of Crown to sell or proclaim without compensation—Tenancy from year to year—Indefeasible title of Crown.
Reg. v. *Dallimore*, L. R. 1 P. C. 13.

43. Lands Compensation Statute, 1869, No. 344, s. 35—Land compulsorily taken—Damage to adjoining lands—Enhancement in value of—Set-off.
Harding v. *Board of Land and Works*, L. R. 11 App. 208; 55 L. J. P. C. 11.

44. Land Tax Act, 1877, s. 4, sub-s. 3—*Bonâ fide* transfer for valuable consideration without secret understanding or trust necessary.
Harding v. *Commissioners of Land Tax*, L. R. (1891) A. C. 446.

45. Land Tax Acts—Purchaser of lot less than 640 acres—No claim by vendor to proportionate part of tax.
Country Estates Co. v. *Graves*, L. R. (1895) A. C. 113; 64 L. J. P. C. 44.

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46. Lands—Waste lands—Grant by Crown—5 & 6 Vict. c. 36—Rights of Crown in gold and silver found beneath the soil.
Woolley v. *Attorney-General of Victoria*, L. R. 2 App. 163; 46 L. J. P. C. 18.

47. Legislative Council and Assembly—Power to commit for contempt—Statutory assumption of rights and privileges of English House of Commons.
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48. Legislature—Breach of privilege—18 & 19 Vict. c. 55—Colonial Act, 20 Vict. No. 1.—Power to commit for contempt by general warrant—Special leave to appeal—Question of public interest —Constitutional rights of Colonial Legislative Assembly—No costs.
Speaker of Legislative Assembly of Victoria v. *Glass*, L. R. 3 P. C. 560; 40 L. J. P. C. 17.

49. Local Government Act 1872, s. 384—Compensation for damage past and future.
President, Commissioner and Ratepayers of Colac v. *Summerfield*, L. R. (1893) A. C. 187; 62 L. J. P. C. 64.

50. Lunatic—No right of person lawfully detained as to have question of lunacy decided by jury—Lunacy Act, 1890—Refusal of special leave to appeal.
Gregory, Ex parte, L. R. (1901) A. C. 128; 70 L. J. P. C. 19.

51. Married woman—Settlement for separate use for life, remainder as she should by deed or will appoint, in default of appointment remainder to executors or administrators—Debts of—Banker's lien—Fraud charged, failure to prove—Effect of—*Johnson* v. *Gallagher*, 3 De G. F. & J. 494, approved.
London Chartered Bank of Australia v. *Lemprière*, L. R. 4 P. C. 572; 9 Moo. P. C. C., N. S., 426; 42 L. J. P. C. 49.

52. Master in Equity—Claim of probate duty—*Mandamus*—Construction of will—Vested interest—Act No. 388, s. 24.
Armytage v. *Wilkinson*, L. R. 3 App. 355; 47 L. J. P. C. 31.

53. Melbourne Harbour Trust Act, s. 46—Notice of action—"Person," meaning of—Division of Act into headings, effect of.
Union Steamship Co. of New Zealand v. *Melbourne Harbour Trust Commissioners*, L. R. 9 App. 365; 53 L. J. P. C. 59.

54. Mining rights—Occupation under Crown lease—Evidence of abandonment—Court of mines, constitution and powers of—Mining Act, 1865, No. 291, s. 193.
Walhalla Gold Mining Co. v. *Mulcahy*, 40 L. J. P. C. 41.

55. Mortgage of station and stock thereon to secure amount of acceptance and renewals thereof—Liberty to mortgagee to make payments in respect of station, run, or stock, and charge to run, stock, &c.—Discounts on renewal of bills, whether secured by mortgage—Payments for government rent due, and scab licences for sheep—Payments for sheepwash.
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56. Mortgagor and mortgagee—Decree for redemption where bill impeached mortgage and did not pray to redeem—Liability of mortgagee in possession—Costs—Registration—Victoria Transfer of Land Statute, ss. 83-85, 87.
National Bank of Australasia v. *United Hand in Hand, &c., Co.*, L. R. 4 App. 391; 48 L. J. P. C. 50.

57. Mortgagor and mortgagee—Equitable deposit of deeds—Remedies of mortgagor—Detinue—Redemption.
Bank of New South Wales v. *O'Connor*, L. R. 14 App. 273; 58 L. J. P. C. 82.

58. Mortgagor and mortgagee—Insolvency of mortgagor—Release of equity of redemption by mortgagor's assignee to mortgagee—Subsequent conveyance by assignee of his interest to mortgagor—Suit by mortgagor to set aside release—Burden of proof.
Melbourne Banking Co. v. *Brougham*, L. R. 4 App. 156; 48 L. J. P. C. 12.

59. Mortmain, law of—51 & 52 Vict. c. 42 (Imperial)—Colonial wills not affected by—Gift by will of domiciled Victorian of money to English corporation for purchase of land in England for charitable purposes—Good as governed by laws of Victoria—Executors bound to pay legacy to corporation.
Mayor, Aldermen, and Citizens of Canterbury v. *Wyburn and Melbourne Hospital*, L. R. (1895) A. C. 89; 64 L. J. P. C. 36.

60. Negligence—Carriage accident—Gratuitous service—*Scott* v. *London Docks Co.* distinguished.
Moffat v. *Bateman*, L. R. 3 P. C. 115; 6 Moo. P. C. C., N. S., 369.

61. Negligence—Nervous shock resulting from fright of apprehended accident—Damages too remote.
Victorian Railway Commissioners v. *Coultas*, L. R. 13 App. 222; 57 L. J. P. C. 69. Not followed in *Dulieu* v. *White and Sons*, L. R. (1901) 2 K. B. 669.

62. New trial ordered—Verdict against weight of evidence—Issue as to testator's capacity.
Aitken v. *McMeckan*, L. R. (1895) A. C. 310.

63. Partnership—Adoption of old firm's liabilities by new firm—Acceptance of new firm's liabilities—Discharge of old firm, 5 Vict. No. 17, s. 39—Deducting value of security from debt—Joint and separate estate of insolvent—English law of bankruptcy.
Rolfe v. *Flower*, L. R. 1 P. C. 27; 35 L. J. P. C. 13, *nom. Bank of Australasia* v. *Flower*.

64. Penal servitude—Colonial court—Admiralty Jurisdiction, 12 & 13 Vict. c. 96—*Habeas corpus*, 16 & 17 Vict. c. 99, s. 6—Abolition of transportation, 20 & 21 Vict. c. 3—Applicability to colonies—Combined effect of Imperial and Colonial legislation.
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65. Petition of Right, actions in nature of—28 Vict. No. 241—Judgments against Crown—Appealable value—Leave to appeal upon terms—Leave given by Judicial Committee without terms—Appeals consolidated.
In re Attorney-General for Victoria, L. R. 1 P. C. 147; 3 Moo. P. C. C., N. S., 527.

66. Probate duty—Personal estate of testator locally situated outside testator's domicile — *Lex domicilii*, succession and enjoyment governed by—*Lex loci*, legal representation, collection, and administration as distinguished from distribution, governed by—Victorian Act, No. 388 of 1870, s. 2, sub-s. 7—Statement of accounts.
Blackwood v. *Reg.*, L. R. 8 App. 82; 52 L. J. P. C. 10.

67. Probate duty—Local situation of testator's assets—Partnership business in colony distinct from other businesses of firm in other countries—Liability to duty—Administration and Probate Act (54 Vict. No. 1060).
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68. Probate duty—Valuation of testator's estate—Bank deposit receipts—Market price—Face price—Bank shares, sums payable in respect of—Deduction of from sum total of assets—Administration and Probate Act, 1890, s. 97.
Master in Equity of Supreme Court of Victoria v. *Pearson*, L. R. (1897) A. C. 214; 66 L. J. P. C. 25.

69. Public Service Act, 1890, ss. 3, 107—Prosecutor for Queen—Prosecuting barrister—Distinct officers—Right of former to pension not affected by fact that office held during pleasure.
Smyth v. *Reg.*, L. R. (1898) A. C. 782.

70. Public servant entitled to quarters—Rent not to be deducted from salary—Act No. 773 of 1889, s. 89.
Rex v. *Fisher*, *Rex.* v. *Bull*, L. R. (1903) A. C. 158; 72 L. J. P. C. 45.

71. Rateability—Exemption of Crown property—Victoria Local Government Act, 1874, s. 253—Racecourse—Victoria Racing Club Act, 1871—Exemption of racecourse.
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72. Rateability—Tramway—Act No. 1112, s. 246—Separate assessment of engine-houses—Jurisdiction of Supreme Court—Mandamus to County Court to state case—Act No. 1105 of 1890, s. 139—Security for costs.
Melbourne Tramway and Omnibus Co. v. *Mayor, &c. of City of Fitzroy*, L. R. (1901) A. C. 153; 70 L. J. P. C. 1.

73. Sale, avoidance of—Purchase of testator's estate by executor who has not proved.
Clark v. *Clark*, L. R. 9 App. 733; 53 L. J. P. C. 99.

74. Sale of goods—Insolvency of purchasers—Unpaid vendor—Lien of—Constructive delivery.
Grice v. *Richardson*, L. R. 3 App. 319; 47 L. J. P. C. 48.

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75. Sale of land—Action for specific performance of contract—Proviso for annulment if vendor unwilling or unable to remove any objection to title—Conditional offer by purchaser to give time for removal of objection—Vendor objecting in good faith to conditions—Threat of litigation against—Vendor entitled to rescind contract.
Woolcott v. *Peggie*, L. R. 15 App. 42; 59 L. J. P. C. 44.

76. Sewers rate—Gas-mains—Rateability as unsewered property—Act No. 1491, s. 8.
Melbourne and Metropolitan Board of Works v. *Metropolitan Gas Co.*, L. R. (1905) A. C. 595; 74 L. J. P. C. 120.

77. State schools, teaching in—Classifiers of, powers of—Junior assistant—Assistant teacher—Public Service Act, 1883, s. 49.
Main v. *Stark*, L. R. 15 App. 384, 59 L. J. P. C. 68.

78. Stoppage *in transitu*—Carrier purchaser's agent—Duration of *transitus*—Right of vendor to stop.
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79. Succession duty—Victoria Act, No. 388 of 1870, ss. 7, 8. 10.
Bell v. *Master in Equity of Supreme Court of Victoria*, L. R. 2 App. 560.

80. Sugar duty—Refining—Simply removing foreign impurities without producing change in article itself not—Customs Act, 1890, s. 12.
Colonial Sugar Refining Co. v. *Attorney-General for Victoria*, 70 L. J. P. C. 75.

81. Surety, action against—Balance of purchase-money of station sold by plaintiff to defendant's principal—Award of compensation to principal in abatement of price—Pleading—Principal not necessary party.
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82. Trade—Agreements in restraint of—Reasonableness—Arbitration clause—Award not condition precedent to right of action.
Collins v. *Locke*, L. R. 4 App. 674, 48 L. J. P. C. 68.

83. Tramway cars, conductors and drivers, licences for—Liability to pay for—Melbourne Tramway and Omnibus Co.'s Act, 1883, ss. 22, 24.
Melbourne Tramway and Omnibus Co. v. *Kidney*, L. R. (1905) A. C. 358; 74 L. J. P. C. 66; *Melbourne Tramway and Omnibus Co.* v. *Melbourne Corporation*, *ibid.*

84. Trust, breach of—Reasonable and honourable action no excuse—Erroneous advice of solicitor—Trustee Company not gratuitous trustees—Trusts Act, 1901, s. 3—Acquiescence—Acceptance and action on appellants' statement of rights not.
National Trustees Co. of Australasia v. *General Finance Co. of Australasia*, L. R. (1905) A. C. 373; 74 L. J. P. C. 73.

85. Vermin Destruction Act, 1890—Vermin-proof swing-gates across roads not main roads—No interference by Local Government Act, 1890, with landowners' right to put with consent of Shire council.
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86. Vice-Admiralty jurisdiction—Suit by seamen for wages and compensation—Limit of number of plaintiffs—Minimum of amount at issue—Clause 15 of Order in Council in pursuance of 2 Will. 4, c. 51—Merchant Shipping Act, 1854, s. 189.
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87. Will—Devise to trustees—Power to devise without fine or premiums—Power to appoint new trustees—Appointment of sole trustee—Conveyance of devised lands—Lease by sole trustee—Payment of rent in advance—Notice of will to lessee—Setting aside lease.
Booth v. *A'Beckett*, 1 Moo. P. C. C., N. S., 201.

88. Wreck—Sunken ship—Liability of owner to clear port—Not escaped by abandonment of wreck to underwriters—Marine Act, 1890, s. 13.
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1. Banker and customer—Forged cheques—44 Vict. No. 10—Ord. XXXVI. No. 10.
Ogilvie v. *Western Australia Mortgage and Agency Corporation*, L. R. (1896) A. C. 257; 65 L. J. P. C. 46.

2. Conflict of laws—Liability of foreign corporation—*Lex loci contractus*.
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3. Crown, servants of in the colonies—Tenure of office during pleasure—Colonial Government on same footing as Home Government as to employment and dismissal—Petition of right—Acting medical officer—Dismissal of before expiration of leave of actual holder of office—Not wrongful—Regulations in Colonial Office List—Costs.
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4. Ejectment, practice in—Ord. XIV. of Supreme Court Rules—Payment of rent not estoppel—Order for plaintiff to sign judgment reversed.
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5. Goldfields Act, 1886—Regulations of 1892, cl. 69. 70—Forfeiture of lease—Decision unequivocal, expressed by overt act—Transmission to warden's office insufficient—Notice to lessee.
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6. Lands, right of selection of within prescribed area—Lands previously proclaimed as town sites but not by virtue thereof devoted to public uses or otherwise withdrawn from Governor's power of alienation.
Western Australia Land Co. v. *Forrest*, L. R. (1894) A. C. 176.

7. Patent obtained beyond colony—Registration in colony—Prior publication or user—Amendment of specification—Renewal fees—Patent Act, 1881, ss. 49, 23.
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8. Public body, exercise of statutory powers by—Street improvement—Compensation for resulting damage—Municipal Institutions Act, s. 109.
   East Fremantle Corporation v. *Annois*, L. R. (1902) A. C. 213; 71 L. J. P. C. 39.

9. Railways Act of 1878 (42 Vict. No. 31), ss. 14, 16—Notice—Crown's right of resumption—Compensation.
   Thomas v. *Sherwood*, L. R. 9 App. 142; 53 L. J. P. C. 15.

10. Transfer of Land Act, 1874, ss. 19, 21, 120—Absence of *caveat*—Power of Commissioner to refuse registration.
    Manning v. *Commissioner of Titles*, L. R. 15 App. 195; 59 L. J. P. C. 59.

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1. Judge—Power of Governor and Council under 22 Geo. 3, c. 75, to amove from office for misbehaviour or neglect of duty—Facts justifying exercise of power—Order upon judge to show cause against suspension.
   Montagu v. *Lieutenant-Governor and Executive Council of Van Diemen's Land*, 6 Moo. P. C. C. 489.

2. Foreshore, title to under Crown grant—Acts of user before grant—Grant of lease—Seisin in *locus in quo*—Improper rejection of evidence and misdirection—New trial.
   Van Diemen's Land Co. v. *Table Cape Marine Board*, L. R. (1906) A. C. 92; 75 L. J. P. C. 28.

3. Legislative Assembly—*Lex et consuetudo parliamenti* not conferred on by introduction of English common law—No distinction on this point between colonial legislative councils and assemblies whose power derived by grant from Crown, and those created under Act of Imperial Parliament—*Kielley* v. *Carson*, 4 Moo. P. C. C. 63, upheld.
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4. Will—Gift over—Issue, meaning of.
   Edyvean v. *Archer*, *In re Harriett Brooke*, L. R. (1903) A. C. 379; 72 L. J. P. C. 85.

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1. Appeal, special leave to—Disputes respecting claims to land vested in Crown and not subject of any prior grant—Act No. 10 of 1858, ss. 5, 8—Court's decision to be final, to be guided by equity and good conscience only, not to be bound by strict rules of law or equity or any legal forms—Crown's prerogative to grant special leave to appeal inapplicable to decision so authorized.
   Moses v. *Parker*; *Ex parte Moses*, L. R. (1896) A. C. 245; 65 L. J. P. C. 18.

2. Principal and surety—Novation—Release of principal debtor—Discharge of surety.
   Commercial Bank of Tasmania v. *Jones*, L. R. (1893) A. C. 313; 62 L. J. P. C. 104.

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1. Banker and customer—Account not earmarked as trust account—Right of set-off.
   Union Bank of Australia v. *Murray-Aynsley*, L. R. (1898) A. C. 693; 67 L. J. P. C. 123.

2. Bankruptcy—English Act, 12 & 13 Vict. c. 106, does not extend to New Zealand—Appeal from refusal of Supreme Court to entertain question as to validity of English bankruptcy—Direction for appeal to stand over for appellant to petition Lords Justices to annul bankruptcy—Remaining abroad—Continuing act of bankruptcy—Poverty of appellant—Security for costs remitted.
   Bunny v. *Hart*, 11 Moo. P. C. C. 189.

3. Charitable trust, action for administration—Crown as defendant not permitted to impeach trust—Valid gift for charitable purposes—Failure of specified purpose—*Cy près*.
   Wallis v. *Solicitor General for New Zealand*, L. R. (1903) A. C. 173; 72 L. J. P. C. 37.

4. Charitable trusts—Exemption from duty—Educational Institute of particular religious sect—Educational endowment vested in trustees, beneficial interest belonging to public—Charitable Gifts Exemption Act, 1883, ss. 2, 3—Land and Income Assessment Act, 1891, s. 16, sub-s. 1—Amendment Act, 1892, s. 3, sub-s. 4.
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5. Common employment, defence of when applicable—Plaintiff at time of injury in defendant's actual employ in relationship of master and servant—Defendant stevedore—Plaintiff servant of shipmaster.
   Cameron v. *Nystrom*, L. R. (1893) A. C. 308; 62 L. J. P. C. 85.

6. Common employment—Discharge of ship, contract for—Reservation by shipowner of employment and control of members of crew working tackle of ship used in discharge—Liability of shipowner to servant of stevedores for injuries occasioned by neglect of one of crew.
   Union Steamship Co. v. *Claridge*, L. R. (1894) A. C. 185; 63 L. J. P. C. 56.

7. Compensation—Estate or interest in land—Wellington Harbour Board and Corporation Act, 1880—Public Works Act, 1882, s. 4—Lessor under revocable licence subsequently acquiring irrevocable rights.
   Plimmer v. *Mayor, &c., of Wellington*, L. R. 9 App. 699; 53 L. J. P. C. 105.

8. Confiscation—Regrant of native lands—Expression "to be held in trust" not always sufficient to create enforceable equitable right or obligation—Circumstances.
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9. Contract with municipal corporation—Guarantee of by appellants—Agreement of with respondent to complete contract—Municipal corporation appellants' agents—Wrongful seizure of works by—Right to sue appellants at once on *quantum meruit.*
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10. Contract—Use of works—Manufacturing use—What not.
Southland Frozen Meat and Produce Export Co. v. *Nelson Brothers*, L. R. (1898) A. C. 442; 67 L. J. P. C. 82.

11. Criminal Code, 1893, s. 24—Marital coercion—No evidence of—Leave to appeal granted under misapprehension of facts.
Brown v. *Attorney-General for New Zealand*, L. R. (1898) A. C. 234; 67 L. J. P. C. 7.

12. Deceased Persons' Estate Duties Acts, 1881, s. 36; 1885, s. 18—Residuary estate taken under appointment empowered by will—Liability to duty.
Jackson v. *Commissioner of Stamps*, L. R. (1903) A. C. 350; 72 L. J. P. C. 68.

13. Forfeiture of goods of innocent holder—Upheld under New Zealand Patents, Designs and Trade-marks Act, 1889, ss. 89, 104—Remedy by application to Governor under Customs Laws Consolidation Act, 1882, s. 267.
Commissioner of Trade and Customs v. *Bell and Co.*, L. R. (1902) A. C. 563; 71 L. J. P. C. 109.

14. General enactment—Special enactment not interfered with by—Pontutu Jurisdiction Act, 1889—Native Land Court under, proceedings in not stayed by commencement of proceedings in Validation Court—Jurisdiction to rehear—Native Land Courts Acts, 1886 and 1888—Right of appeal.
Barker v. *Edger*, L. R. (1898) A. C. 748; 67 J. P. C. 115.

15. Harbour Board, powers of—Default of its harbour master acting as pilot—Liability of Board for—Timaru Harbour Act, 1876—Harbours Act, 1878 and 1886.
Shaw, Savill and Albion Co. v. *Timaru Harbour Board*, L. R. 15 App. 429; 59 L. J. P. C. 77.

16. Husband and wife—Deed of separation and annuity—Fraudulent representations of wife discredited by husband at execution—Subsequent adultery of wife—No condition in deed as to chastity—Costs in pauper appeals—Rule in House of Lords adopted by Judicial Committee.
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17. Judges—Appointment of by Governor—Limitation of Governor's power to appointment of judges to whom ascertained salary payable by law—Supreme Court Judges Act, 1858, s. 2—Supreme Court Act, 1882.
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8. Land, native title to possession of—Cession to Crown, jurisdiction as to—Native Rights Act, 1865, ss. 3, 4, 5—Advertising land in suit—Land Act, 1892, ss. 136, 137—Injunction.
   Nireaha Tamaki v. *Baker*, L. R. (1901) A. C. 560; 70 L. J. P. C. 66.

19. Lands, expropriation of—Omission to give notice of non-admission of claims—Relief against consequences refused—Public Works Act, 1894, s. 44.
   Wellington Corporation v. *Johnston*, L. R. (1902) A. C. 396; 71 L. J. P. C. 73.

20. Lands, native, transfer of—Land Transfer Acts, 1870-85—Registration under conclusive except in certain cases, of which fraud one—Land Act 1873—Lands Fraud Prevention Act, 1881, ss. 4, 6, 15—Land Court Act, 1894, ss. 59, 73—Fraud in procuring registration—Actual not constructive—Errors of procedure in Native Land Courts not invalidatory of registered title—Orders of freehold tenure—Memorandum of transfer endorsed by Land Commissioner—Imperial Glasgow Bank Act, 1882
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21. Lands surrendered to Crown subject to existing contracts—Absolute ownership in Crown unfettered by trust—10 & 11 Vict. c. 112 (Imperial)—12 & 13 Vict. c. 79 (Imperial)—Rights against trespasser.
   Riddiford v. *Reg.* L. R. (1905) A. C. 147; 74 L. J. P. C. 37.

22. Lessor, covenant by—Construction—Does it run with reversion—Liability for breach after lessor's death—Liability of lessor's general estate—Rights of specific devisees of reversion.
   Eccles v. *Mills*, L. R. (1898) A. C. 360; 67 L. J. P. C. 25.

23. Licensing poll declared void—Intention of legislature all licences to continue till determination by electors—Licensing Act, 1895, s. 3—Interpretation Act, s. 5, sub-s. 7.
   Smith v. *McArthur*, L. R. (1904) A. C. 389; 73 L. J. P. C. 88.

24. Local legislature—Power to subject absentees to local tribunals—Contracts made or to be performed in colony—Absence of defendant—Authorization of local courts to decide whether to proceed or not—15 & 16 Vict. c. 72—New Zealand Code, 46 Vict. No. 29.
   Ashbury v. *Ellis*, L. R. (1893) A. C. 339; 62 L. J. P. C. 107.

25. Master and servant—Wrongful act of servant within scope of employment—Liability of employer—Lighting of fire on land by contractor—Disregard of special stipulations in contract as to time when fire to be lit—To escape liability employer must show contractor's act that of trespasser and not within scope of contract.
   Black v. *Christchurch Finance Co.*, L. R. (1894) A. C. 48; 63 L. J. P. C. 32.

26. Master and servant—Wrongful dismissal—Justifying misconduct, no fixed rule of law defining—Inconsistency with fulfilment of conditions of service—Question for jury—Duty of judge—New trial.
   Clouston and Co. v. *Corry*, L. R. (1906) A. C. 122; 75 L. J. P. C. 20.

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27. Mining Act, 1898, ss. 232, 233—Lands injuriously affected—Compensation for—To be settled by agreement or judicial decision—Summary procedure under Public Works Act, 1894, s. 44, not authorized.
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28. Mortgagor and mortgagee—Settled account reopened—Compound interest charged by mistake—Mutual mistake of law.
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29. Municipal Corporations Act, 1900, s. 219—"Adjacent"—Degree of proximity question of circumstances—Six miles.
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30. Negligence—Liability of executive government for—New Zealand Crown Suits Act, 1881, s. 37—Reasonable care—Damage to vessels using staiths of defendants.
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31. Principal and Agent—Promise by defendants to pay principal's cheques—Consideration moving from principal—Unauthorized substitution of one form for another by agent with defendant's knowledge—Contract completed—Dishonour of cheques, liability for—Special damage not alleged—Evidence of not admissible.
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32. Principal and surety—Co-sureties in severalty—Release of one—Effect on liability of other—Pleading.
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33. Railways Construction and Land Act, 1881, ss. 123, 125, 126—Order in Council retaining a railway as Government property—Rights of debenture-holders.
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34. Salvage—Towage service to ship in no danger—Arrest of ship in unsuccessful suit—No claim for demurrage or detention.
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35. Stipendiary magistrate, jurisdiction of—General throughout whole colony, controlled by departmental arrangements—Magistrates Courts Act, 1893—Petition for inquiry into licensing poll—Alcoholic Liquors Sale Act, 1895.
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36. Waste lands—Authority of Governor to grant—Ordinance of Sess. 1, No. 2, of 1841—Excess in grant.
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37. Waste lands—Goldfields Act, 1866, s. 16—Cancelling lease on discovery of gold.
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38. Waste lands—Southland Act, 1865—Statutory contract—Date when price fixed—Application for grant—Making of grant.
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39. Waste lands—Southland Acts, 1865, 1867—Construction—Rights of purchase—Jurisdiction of Commissioners.
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40. Will—Construction of—Amendment of probate refused—No distinction between testator's and draughtsman's words—"From and after the decease of my wife"—Time of vesting—Portion of will introduced through fraud or inadvertence—Effect of.
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41. Will—Last seen in testator's possession—Non-appearance of at death of testator—Presumption of destruction by testator—Rebuttal of—Presumption against fraudulent abstraction—Circumstances.
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42. Will—Maori will—Signed by mark—Obtained by propounder having substantial interest—Witnessed by relations of propounder—*Onus probandi* increased—Strict proof necessary.
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2. Pacific Islanders Protection Acts, 1872, 1875—Western Pacific Order in Council, Aug. 13, 1877—Jurisdiction of High Commissioner's Court—Suit relating to land in Samoa—Measure of damages for trespass.
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3. Alien—*Status* of, how determined—Prerogative of Crown as to—Law of colony—*Droit d'aubaine* by old French law established in Canada by 14 Geo. 3, c. 83—Alteration of rights between the parties—Provincial law—Not noticed by Judicial Committee if not on the record.
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5. Appeal from Ontario Court of Appeal to King in Council, competency of—Court of Appeal to decide—Refusal of leave where Court of Appeal has expressed no opinion.
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6. Appeal, right of—Civil Code of Lower Canada, art. 2274—Consolidated Statutes of Lower Canada, c. 87, s. 12—Code of Civil Procedure of Lower Canada, arts. 766, 1178, 1360—Special leave to appeal—Importance of question at issue.
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8. Arbitration—*Aimables compositeurs*, duties and powers of—Code of Civil Procedure, art. 1346.
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9. Arbitration—Ontario Act, 36 Vict. c. 102, s. 5—Not proceeded under—Remedy by action not lost—Injunction granted, to be raised on steps under Act being taken.
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10. Arbitrators, jurisdiction of—Submission, deed of—Common school fund—Uncollected prices of lands, claim for.
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11. Assessment, amount of—Due on filing assessment roll—Prescription—Quebec Act, 52 Vict. c. 79, ss. 120, 144, 231—Quebec Civil Code, arts. 2227, 2232, 2236.
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13. Bank—Registration of transfer of shares by—No duty to see to execution of trusts—Notice of trust—Bank Act, 18 Vict. c. 202.
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14. Bankrupt—Canadian Ordinance, 2 Vict. c. 36, s. 5—Debts provable—Interest of bankrupt—Admission of evidence of—Verbal agreement qualifying written contract.
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15. Barrister—Rights and remedies of by law of Quebec—*Quantum meruit*—Canada Petition of Right Act, 1876, s. 19, sub-s. 3.
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16. Bill of exchange—Agreement between holder and drawer—Cheque given by holder for acceptor to meet bill and accept new one—Payment by acceptor of first bill with cheque—Refusal to accept new bill—Agreement between holder and drawer no release to acceptor.
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17. Bill of lading, construction of—*Lex loci contractus*—Shipper, liability of.
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18. Builder, liability of—Civil Code, art. 1688—*Vice du sol*—Defective foundations.
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19. Builder's privilege—Hypothecary privilege—Civil Code of Lower Canada, art. 2013 (G), 2103—59 Vict. c. 42.
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20. Burial, ecclesiastical—*Status* of Roman Catholic Church in Lower Canada—*Mandamus*—*Recusatio judicis.*
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21. Cause of action, acceleration of—Insolvency of debtor—Civil Code of Lower Canada, art. 1092.
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22. *Certiorari* from Supreme Court to Queen's Bench—No appeal—Consolidated Statutes, c. 88, s. 17; c. 77, s. 23.
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23. Cheque, fraudulent alteration of, after certifying of by bank—Proof of against innocent holder for value—Negligence—Notice of dishonour unnecessary—Reasonable delay—Effect of bank's certifying.
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24. Colonial courts, form and practice of—Indisposition to interfere with—Motion for verdict *non obstante.*
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25. Company—Contract *ultra vires*—Consent judgment on invalid—Contract set aside on terms.
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26. Company, powers of—Formation and investment of reserve fund—Purchase by director and resale to company—27 & 28 Vict. c. 23 (Canada).
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27. Company, powers of—Purchase of real estate *intra vires* Quebec Act, 1 Edw. 7. c. 67—Resolution of directors—Lapse of time, purchase absolute by—Resolution can't be shown invalid because passed by insufficient *quorum.*
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28. Company—Sale by director to—Ratification at general meeting—Vendor's right to vote as shareholder.
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29. Company—Shares subject to trust, transfer of—Constructive notice—Signature of bank manager as "manager in trust," import of.
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30. Company—Shares—Payment in full—Half by cash, half by receipts on account of purchase price of property acquired by company—Quebec Revised Statutes, art. 4722 (1), (5), (similar to s. 25 of English Companies Act, 1867).
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31. Company in liquidation—Corporate powers retained—Power of liquidators to sue in own name restricted—Amendment of error by adding bank as plaintiff—Canadian Winding-up Act, 1886, ss. 15, 31—Civil Procedure Code, ss. 516, 521.
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32. Compensation—Alimentary allowance—No distinction between law and equity—*Rapport* or return.
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33. Compensation—Debtor and creditor—Canadian Act, 14 & 15 Vict. c. 51—Set-off—Civil Code of Lower Canada, art. 1187, tit. Obligations, s. 5; art. 1188.
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34. Compensation for death—Measure of damages—Policy of insurance on life of deceased, amount of not deducted—Revised Statutes of Ontario, c. 135, ss. 2, 3.
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35. Concurrent findings of fact, no disturbance of unless plain miscarriage of justice or evidence not adequately weighed or considered—Gifts by testator, avoidance of—Civil Code of Lower Canada, art. 762.
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36. Construction of writing—Peculiar sense of term—Evidence—"Premises"—Fire insurance on ship—Condition as to gunpowder "on premises."
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37. Contempt of Court—Letter reflecting on judge—Consolidated Statutes c. 77, s. 77—No authority in judge of Queen's Bench sitting alone in exercise of criminal jurisdiction to pronounce counsel in contempt for publishing letters reflecting on his conduct, or to impose a fine—Writ of error—Appeal—Reference by Crown under 3 & 4 Will. 4, c. 41, s. 4—Attachment of counsel.
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38. Contract—Construction of—"Say about"—Words of expectancy and estimate—Estoppel by pleadings.
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39. Contract—Conditional promise—No legal obligation imposed.
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40. Contract with Government—No express contract by Government—No obligation on Government to give work under—Petition of Right, decision of Court of Queen's Bench for Lower Canada on—Appeal from lies to H.M. in Council.
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41. Contract—Not purchase—Agency.
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42. Copyright Act, Fine Arts, 1862, 25 & 26 Vict. c. 68 (Imperial), does not extend to any part of British dominions outside United Kingdom—Canada Copyright Act, 1875, not inconsistent with this view.
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43. Corporation—Property held for ends of, not for revenue—Farm worked for revenue, not detached from residue of corporate property.
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44. Corporation, statutory duties of—Breach—No right of action for.
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45. Criminal cases, appeal in—Validity of 43 Vict. c. 25 (Canada).
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46. Crown and Provinces, relation between—Not severed by British North America Act, 1867—Property and revenues reserved to Province by ss. 109, 126, vested in H.M.—Winding-up of bank—Priority of Provincial Government over other simple contract creditors—Prerogative of Crown.
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47. Crown, prerogative of to admit appeals—Power of Dominion and Provincial legislatures—British North America Act, 1867, ss. 91, 92—Canadian Act, 40 Vict. c. 41, s. 28—"Final"—Delivery necessary to pass property—Civil Code, art. 1472.
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48. Crown, rights of in Lower Canada—Priority of payment in respect of the Crown's "*Comptables*"—Sect. 1994 of Civil Code—Sect. 611 of Civil Procedure Code—Conflict between the Codes—Construction.
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49. Crown lands transferred to Province as swamp lands—Revised statutes of Canada, c. 47, s. 4—Date of transfer—Order in Council made after survey and selection prescribed by Act—Till then profits from transferred lands to Dominion.
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50. Customs Tariff Act, 1894 (57 & 58 Vict. c. 33), s. 4—Tariff Act, 1895—Date of importation of goods—Customs Act, 1886 (49 Vict. c. 32), ss. 25, 31, 34, 150—Port at which goods to be reported.
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51. Customs Tariff Act, 1897, s. 4—Imported goods—Foreign built ship.
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52. Damages inappreciable and irrecoverable—Action dismissed—New trial refused.
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53. Debentures issued by trustees of Quebec turnpike roads—Ordinance, 4 Vict. c. 17—Canadian Act, 16 Vict. c. 235—Non-liability of Province of Canada.
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54. Debt, sale of—Signification of to debtor—Notarial act not necessary—Institution of action sufficient—Civil Code of Lower Canada, arts. 1570, 1571.
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55. Debtor and creditor—*Tiers saisis*, garnishees—Transferee of debtor and transferor of garnishees necessary party—Liability of garnishees.
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56. Domicile—*Acte de mariage*, recital in not binding declaration of domicile with legal effect of contract for community of property—Movable property governed by law of owner's international domicile—Civil Code of Lower Canada, art. 1260, 6, 63.
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57. Dominion railway—Section capable of sale in its entirety—Part of section outside jurisdiction of provincial court—No power in court to order sale—Mortgage—Revenues subject to working expenses of whole line—Net earnings of section—Issues not raised in court below—No argument on allowed before Judicial Committee.
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58. Donations—Revocability of gifts *pur la survenance d'enfants du donateur*—Ordinance of 1731—French law previously existing in Canada unaffected.
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59. Ejectment, action of—Effect of Canadian Act, 18 Vict. c. 3, on defendant's title—Prescription—Immemorial possession—Disclosure of title with its infirmities.
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60. Elections—Quebec Controverted Elections Act, 1875—Judgment avoiding election—Royal prerogative as to admitting appeal.
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61. Election petitions—British North America Act, 1867, s. 92, sub-s. 14—Controverted Elections Act, 1874, 37 Vict. c. 10 (Canada)—Distribution of legislative power—Jurisdiction of Supreme Court—Special leave to appeal refused, no substantial question, no doubt of soundness of decisions, no apprehension of difficulty or disturbance from decision.
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62. Electricity and gas supply—Power to lay wires underground—Power to open streets involved—Quebec Act, 55 & 56 Vict. c. 77.
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63. Employer and employed—Right of action of widow and relatives personal, not derived from deceased or his representatives—Quebec Civil Code, 1056—Contract deceased to have no claim—"Satisfaction"—Real and tangible indemnity.
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64. Escheats—Rights of Province to—British North America Act, 1867, ss. 102, 109.
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65. Evidence—Canadian Act, 25 Geo. 3, c. 2, regulating proceedings in courts of justice—Proof of facts concerning commercial matters to be governed by English law—Old French revoked—Statute of Frauds—Parol contract.
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66. Evidence—Notary public—French law in Lower Canada—English law in Upper Canada.
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67. Explosion, damage by—Verdict, due to neglect of defendants and plaintiffs not negligent—Reversal of reversed—Proof of cause not reasonably required under circumstances of accident, the work of a moment, origin and course of incapable of detection.
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68. Expropriation—Apportionment of indemnity—27 & 28 Vict. c. 60 (Canada)—29 & 30 Vict. c. 56 (Canada), s. 12.
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69. Expropriation Closing one end of street—Interference with rights of owners of houses adjoining—Action of indemnity—Compensation—Civil Code, art. 407—Canadian Act, 27 & 28 Vict. c. 60.
Mayor, &c., of Montreal v. *Drummond*, L. R. 1 App. 384; 45 L. J. P. C. 33.

70. Expropriation—Report of Commissioners of not final—Canadian Act, 27 & 28 Vict. c. 60—35 Vict. c. 32, s. 7 (Quebec)—Action to augment indemnity—Burden of proof.
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71. Expropriation—Report of Commissioners of—Canadian Act, 27 & 28 Vict. c. 60—Order to remove by Supreme Court—Right of appeal to Queen's Bench—Code of Civil Procedure, art. 1115.
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72. Extradition—Arrest and remand by Extradition Commissioner—Writs of *habeas corpus* issued by judge in Quebec—Discharge of accused under without jurisdiction.
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73. Felony—Depositions on oath before trial—Admissibility against deponent on criminal charge—Answers compelled—New trial—Canadian Statute, 32 & 33 Vict. c. 80—Special leave to appeal from judgment in a case reserved on trial for felony.
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74. Feudal tenures in Lower Canada—Feudal rights of seigneur extinguished in lands acquired by the Crown—Indemnity payable to seigneur.
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75. Final judgment—Yukon Territorial Act, 1899, s. 8—Action by executors—Adjudication on one item—No appeal from to British Columbia Court after twenty days—Appeal to Supreme Court incompetent—Special leave, omission in petition for immaterial and *bonâ fide*—Applicant not deprived of costs.
McDonald v. *Belcher*, L. R. (1904) A. C. 429; 73 L. J. P. C. 91.

76. Fire insurance—Destruction of church by fire—Transfer to insurers of right to sue and claim for damage—Subrogation of debt—French law.
Quebec Fire Insurance Co. v. *St. Louis*, 7 Moo. P. C. C. 286.

77. Fire insurance—Steamer—Warranty to navigate—Destruction in dock—Form and practice of colonial courts—Indisposition to interfere with—Motion for verdict *non obstante*.
Grant v. *Ætna Insurance Co.*, 15 Moo. P. C. C. 516.

78. Fire insurance on ship—Insurance subject to conditions in policy so far as applicable—Conditions primarily intended to apply to insurance of houses and buildings—Proviso against more than twenty pounds of gunpowder being on " premises " at time of loss—Proviso held applicable.
Beacon Life and Fire Insurance Co. v. *Gibb*, 1 Moo. P. C. C., N. S., 73.

79. Fraud—Instrument for purpose fraudulent as to third party—Binding between parties—Construction of mortgage—Sale with conditional right of re-purchase.
Shaw v. *Jeffery*, 13 Moo. P. C. C. 432.

80. Fraud—Failure of proof—New issue of negligence not to be raised in appeal.
Connecticut Fire Insurance Co. v. *Kavanagh*, L. R. (1892) A. C. 473; 61 L. J. P. C. 50.

81. Gaming contracts—Actual contracts of purchase and sale through broker—Object speculation—Not within meaning of Quebec Civil Code, art. 1927 (*cf.* English Act, 8 & 9 Vict. c. 109, s. 18).
Forget v. *Ostigny*, L. R. (1895) A. C. 318; 64 L. J. P. C. 62.

82. Gas, right to stop supply of at any of respondent's several houses on non-payment for any one—Canada Act, 12 Vict. c. 183, s. 20.
Montreal Gas Co. v. *Cadieux*, L. R. (1899) A. C. 589; 68 L. J. P. C. 126.

83. Gift *inter vivos*—Law of substitution—*Héritiers*, extension of meaning of—*Droit de retour*.
Herse v. *Dufaux*, L. R. 4 P. C. 468; 42 L. J. P. C. 1.

84. Guarantee of debenture by municipality—Invalidity of bye-law authorizing—*Ultra vires*—Quebec Act, 60 Vict. c. 78, ss. 7 (c), 27.
Hanson v. *Corporation of Village of Grand'Mere*, L. R. (1904) A. C. 789; 73 L. J. P. C. 105.

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85. Highway, public—Soil of vested in whom—Registration in Montreal as public place—Previous enjoyment by public as public way—Subsequent similar enjoyment—23 Vict. c. 72, s. 10, sub-s. 6.
De la Chevrotière v. *Cité de Montréal*, L. R. 12 App. 149; 56 L. J. P. C. 1.

86. Husband and wife—Custody of children—Husband's misconduct—Paternal authority controlled by external considerations—Children remanded to wife's custody.
Smart v. *Smart*, L. R. (1892) A. C. 425; 61 L. J. P. C. 38.

87. Husband, purchase by in names of wife and daughter—Account by mandatory before action for advances—Gifts by husband to wife—Civil Procedure Code of Quebec, s. 6.
Eddy v. *Eddy and Vir*, L. R. (1900) A. C. 299; 69 L. J. P. C. 58.

88. Ice and snow, duty of clearing railway tracks from—Right to clear into streets—Electric sweeper.
City of Montreal v. *Montreal Street Railway Co.*, L. R. (1903) A. C. 482; 72 L. J. P. C. 119.

89. Income tax—Leviable on balance of gain over loss—New Brunswick—31 Vict. c. 36, s. 4 (New Brunswick Act).
Lawless v. *Sullivan*, L. R. 6 App. 373; 50 L. J. P. C. 33.

90. Incorporation of railway company—Validity of municipal bye-law—Conditions precedent—Law of Canada, 34 Vict. c. 48, 37 Vict. c. 43.
Grand Junction and Midland Railways of Canada v. *Corporation of Peterborough*, L. R. 13 App. 136.

91. Indian reserves—Rights of the Province in as against the Dominion—British North America Act, 1867, s. 109.
St. Catherine's Milling and Lumber Co. v. *The Queen*, L. R. 14 App. 46; 58 L. J. P. C. 54.

92. Indian reserves—Beneficial interest therein—Liability to pay annuities in respect thereof—British North America Act, 1867, ss. 109, 111, 112.
Attorney-General for Dominion of Canada v. *Attorney-General for Ontario; Attorney-General for Quebec* v. *Attorney-General for Ontario*, L. R. (1897) A. C. 199; 66 L. J. P. C 11.

93. Indians, lands in Ontario surrendered by the—Full beneficial interest therein in Crown as representing the Province—Disposition thereof on advice of Minister of Province and under seal of Province—Appropriation of part thereof by Dominion Government as reserve for the Indians *ultra vires*—British North America Act, 1867, s. 91.
Ontario Mining Co. v. *Seybold*, L. R. (1903) A. C. 73; 72 L. J. P. C. 5.

94. Information—Power of Attorney-General to discontinue—Code of Civil Procedure of Lower Canada, arts. 997, 998—Public lane—Power to close with assent of City Council—General Railway Act, Revised Statutes of Canada, 1888, c. 109, s. 12.
Casgrain v. *Atlantic and North-West Railway Co.*, L. R. (1895) A. C. 283; 64 L. J. P. C. 88.

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95. Insolvent's estate, distribution of—Landlord's privilege—Retrospective legislation—Application of existing statute to liquidation arising after enactment—61 Vict. c. 46.
Ross v. *Beaudry*, L. R. (1905) A. C. 570; 74 L. J. P. C. 106.

96. Insurance company—Canadian Ordinance, 4 Vict. c. 37—6 Vict. c. 22, s. 4—Subscription of policies—Seal of corporation—Powers of manager—*Ultra vires.*
Montreal Assurance Co. v. *McGillivray*, 13 Moo. P. C. C. 87.

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97. Interest on amount decreed—Power to order payment of on further directions—Intentional omission—Discretion not overruled—No claim made for interest at commencement of action—Interest from date of decree.
Burland v. *Earle*, L. R. (1905) A. C. 590; 74 L. J. P. C. 156.

98. Interest on payments in arrear—Duty of court to allow—Ontario Judicature Act, s. 113.
Toronto Railway Co. v. *Corporation of Toronto*, L. R. (1906) A. C. 117; 75 L. J. P. C. 36.

99. Justice of District Court, removal of to another District Court—Grant of precedence over other judges of the court.
In re Justice Elzéar Bedard, 7 Moo. P. C. C. 23.

100. Land—Contract for grant of to A from government—Part payment—Assignment of interest to B, a creditor, in consideration of £100—Possession taken by B, and grant obtained with privity of A—A bankrupt, B his assignee—Death of B—New assignee to A—Bill against B's devisee for redemption, on ground that original transaction a mortgage, dismissed.
Holmes v. *Mathews*, 9 Moo. P. C. C. 413.

101. Land, lease of—Covenant to pay taxes—Usual covenant by lessee.
Canadian Pacific Railway Co. v. *Corporation of Toronto*, L. R. (1905) A. C. 33; 74 L. J. P. C. 15.

102. Land, tenant in possession of—Same right to enforce equities against purchaser as against vendor—Interest under collateral agreements—Possession amounts to notice of tenant's interest—*Semble*, endorsement on deed of receipt of consideration-money acknowledged in body of deed not customary in Canada.
Barnhart v. *Greenshields*, 9 Moo. P. C. C. 18.

103. Lands, taking of for public improvements—Canadian Act, 14 & 15 Vict. c. 128, ss. 66, 68—Corporation of Montreal—Settlement of value—Evidence of experts—Swearing witnesses by justices—Waiver of right to complain of illegal jurisdiction.
Beaudry v. *Mayor, &c., of Montreal*, 11 Moo. P. C. C. 399.

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104. Law Reform Act, 37 Vict. c. 7 (Ontario), ss. 32, 33—38 Vict. c. 11 (Canada Supreme Court Act), ss. 17, 22, 38—Jurisdiction of Queen's Bench and Supreme Court—Rule to set aside verdict—Misdirection—New trial.
Connecticut, &c., Co. v. *Moore*, L. R. 6 App. 644.

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105. Legislative powers, distribution of—British North America Act, 1867, ss. 91, 92—" Property and civil right "—" Regulation of trade and commerce "—Validity of Ontario Act, 39 Vict. c. 24, as to fire insurance in the Province—Consistency of with Dominion Act, 38 Vict. c. 20, as to licensing insurance companies—Prevalence of statutory conditions over conditions sought to be imposed by insurance companies—*Interim* note not a policy—Interpretation of.
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106. Legislative powers, distribution of—British North America Act, 1867, ss. 91, 92—Liquor laws—Power of prohibition—Canada Temperance Act, 1886, how far *ultra vires*, how far valid—Ontario Act, 53 Vict. c. 56, s. 18, valid, but at possible times and places inoperative.
Attorney-General for Ontario v. *Attorney-General for the Dominion and Distillers' and Brewers' Association of Ontario*, L. R. (1896) A. C. 348 ; 65 L. J. P. C. 26.

107. Legislative powers, distribution of—British North America Act, 1867, ss. 91, 92, 108—Rivers and lake improvements—" Public harbours," what embraced in term—Fisheries and fishing rights—Revised Statutes of Canada, cc. 92, 95, s. 4 ; how far within powers of Dominion Parliament—Revised Statutes of Ontario, c. 24, s. 47, *intra vires* province with specific exception—Ontario Act, 1892, 55 Vict. c. 10, how far *ultra vires*.
Attorney-General for Dominion of Canada v. *Attorneys-General for Ontario, Quebec, and Nova Scotia*, L. R. (1898) A. C. 700 ; 67 L. J. P. C. 90.

108. Legislative powers, distribution of—British North America Act, 1867, s. 91 (sub.-ss. 2, 3, 15), s. 92 (sub.-s. 2)—Direct taxation—Banks—Insurance companies.
Bank of Toronto v. *Lambe*, L. R. 12 App. 575 ; 56 L. J. P. C. 87.

109. Legislative powers of Dominion Parliament—British North America Act, 1867, ss. 91, 92, sub-ss. 9, 13, 16—Validity of Canada Temperance Act, 1878—Objects and scope of—" Peace, order, and good government "—Provision for special application of Act to particular place—Effect of on character of Act as general legislation.
Russell v. *Reg.*, L. R. 7 App. 829 ; 51 L. J. P. C. 77.

110. Legislative powers of Dominion Parliament—Telephone company's business involving extension beyond limits of any one province—Within exception of s. 92, sub-s. 10 (*a*), of British North America Act, 1867, from class of local works and undertakings assigned exclusively to provincial legislatures—43 Vict. c. 67, incorporating company, within exclusive competence of Dominion Parliament under s. 91—Ontario Act, 45 Vict. c. 71, *ultra vires*, not legislative bargain.
Toronto Corporation v. *Bell Telephone Co. of Canada*, L. R. (1905) A. C. 52 ; 74 L. J. P. C. 22.

111. Legislative powers of Dominion Parliament—British North America Act, 1867, ss. 91, 92—Canadian Act, 37 Vict. c. 103—Incorporation of association to carry on definite kinds of business—Code of Civil Procedure, c. 10, s. 1, arts. 997, 998.
Colonial Building and Investment Association v. *Attorney-General of Quebec*, L. R. 9 App. 157 ; 53 L. J. P. C. 27.

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112. Legislative powers of Dominion Parliament—British North America Act, 1867, s. 91, sub-s. 15; s. 92, sub-s. 13—Validity of Dominion Bank Act, 46 Vict. c. 120*—Negotiability of warehouse receipts.
Tennant v. *Union Bank of Canada*, L. R. (1894) A. C. 31; 63 L. J. P. C. 25.

113 Legislature, provincial—Powers of—British North America Act, 1867, ss. 91, 92—Act of Legislature of Quebec, 33 Vict. c. 58.
L'Union St. Jacques de Montréal v. *Bélisle*, L. R. 6 P. C. 31.

114. Legislature, provincial—Powers of—British North America Act, 1867, s. 92, sub-ss. 2–9—Quebec Act, 39 Vict. c. 7—Licences on policies of assurance and renewals—Illegality of—Direct taxation.
Attorney-General for Quebec v. *Queen Insurance Co.*, L. R. 3 App. 1090.

115. Legislature, provincial—Powers of—British North America Act, 1867, ss. 91, 92, 129—Canada Act, 22 Vict. c. 66—Inability of legislature of Ontario or Quebec or of both together to repeal or modify—Invalidity of Quebec Act, 38 Vict. c. 64—Right to sue for a declaration of—Effect of resolution of Church Synod.
Dobie v. *Temporalities Board*, L. R. 7 App. 136; 51 L. J. P. C. 26.

116. Legislature, provincial—Powers of—British North America Act, 1867, ss. 91, 92—Liquor Licence Act of 1877, c. 181, Revised Statutes of Ontario—Regulations of local board—Imprisonment with hard labour—Subjects falling in different aspects within both s. 91 and s. 92 of British North America Act.
Hodge v. *Reg.*, L. R. 9 App. 117; 53 L. J. P. C. 1.

117. Legislature, provincial—Powers of—British North America Act, 1867, ss. 65, 92, sub-ss. 2, 14—Quebec Act, 43 & 44 Vict. c. 9—Duty upon exhibits in Quebec courts, imposition of held *ultra vires*.
Attorney-General for Quebec v. *Reed*, L. R. 10 App. 141; 54 L. J. P. C. 12.

118. Legislature, provincial—Enactments ancillary to bankruptcy law within competence of, so long as not in conflict with existing bankruptcy law of Dominion Parliament—British North America Act, 1867, ss. 91, 92.
Attorney-General of Ontario v. *Attorney-General of Dominion of Canada*, L. R. (1894) A. C. 189; 63 L. J. P. C. 59.

119. Legislature, provincial—Powers of—British North America Act, 1867, s. 92, sub-ss. 2, 9—Liquor Licence Act, Revised Statutes of Ontario, c. 194, s. 51, sub-s. 2, *intra vires*.
Brewers' and Maltsters' Association of Ontario v. *Attorney-General for Ontario*, L. R. (1897) A. C. 231; 66 L. J. P. C. 34.

120. Legislature, provincial—Powers of—British North America Act, 1867, s. 92, sub-ss. 1, 4, 14—Revised Statutes of Ontario, 1877, c. 139—Provincial Bar—Power of Lieutenant-Governor to appoint Queen's counsel and to issue patents of precedence.
Attorney-General for Dominion of Canada v. *Attorney-General for Province of Ontario*, L. R. (1898) A. C. 247; 67 L. J. P. C. 17.

* Repealed subsequently to transactions in question in case.

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121. Legislature, provincial—Powers of—British North America Act, 1867, s. 91, sub-s. 29; s. 92, sub-s. 10—Exclusive right of Dominion Parliament to regulate construction, repair and alteration of appellant railway—No power in provincial legislature to regulate structure of ditch, part of authorized works—Municipal Code of Quebec—Provisions of as to cleaning ditch and removing obstructions *intra vires* provincial legislature.
Canadian Pacific Railway v. *Corporation of Notre Dame de Bon Secours*, L. R. (1899) A. C. 374; 68 L. J. P. C. 54. *Vid. post*, British Columbia, 6.

122. Legislature, provincial—Grant of exclusive right to establish system of electric lighting for term of years within exclusive competence of—Quebec Act, 58 Vict. c. 69—Bye-law, construction of.
Hull Electric Co. v. *Ottawa Electric Co.*, L. R. (1902) A. C. 237; 71 L. J. P. C. 58.

123. Legislature, provincial—Powers of—Criminal legislation—Exclusive power of Dominion Parliament over—Ontario Act to prevent profanation of Lord's Day *ultra vires*—British North America Act, 1867, s. 91, sub-s. 27—Hypothetical questions, practice as to.
Attorney-General for Ontario v. *Hamilton Street Railway Co.*, L. R. (1903) A. C. 524; 72 L. J. P. C. 105.

124. Lessee, liability of to adjoining proprietor for works on his land—*Action négatoire* against lessors claiming no servitude unnecessary.
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125. Letters patent of incorporation, obtaining of by fraud—Partial annulment of disallowed—Writ of *scire facias*—C. C. P. 1034, 1035—31 Vict. c. 25 (Quebec).
La Banque d'Hochelaga v. *Murray*, L. R. 15 App. 414; 59 L. J. P. C. 102.

126. Life assurance policy, validity of—Lawful holder—No insurable interest—Civil Code of Lower Canada, art. 2590.
Anctil v. *Manufacturers' Life Insurance Co.*, L. R. (1899) A. C. 604; 68 L. J. P. C. 123.

127. Life assurance, policies of—Proviso for cash payment of premiums—*Onus probandi*—Insurer's agent, duties of—Payment of premium by note discounted and then dishonoured.
London and Lancashire Life Assurance Co. v. *Fleming*, L. R. (1897) 499; 66 L. J. P. C. 116.

128. Marine insurance—Loss by peril not insured against—Notice of abandonment, acceptance of by conduct—Civil Code, arts. 2544, 2545, 2547.
Provincial Insurance Co. v. *Leduc*, L. R. 6 P. C. 224; 43 L. J. P. C. 49.

129. Marine insurance—Voyage policy—Warranty of seaworthiness—Different stages of—*Weir* v. *Aberdeen*, 2 B. & Ald. 320, discussed.
Quebec Marine Insurance Co. v. *Commercial Bank of Canada*, L. R. 3 P. C. 234; 7 Moo. P. C. C., N. S., 1.

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130. *Mariage, acte de*—Recital in—Effect of as to domicile—Civil Code of Lower Canada, arts. 1260, 6, 63.
McMullen v. *Wadsworth*, L. R. 14 App. 631; 59 L. J. P. C. 7.

131. Marriage contract—Community of property—*Reprise*—Wife's consent to husband's hypothecation—Notarial Act—Formalities of execution.
Hamel v. *Panet*, L. R. 2 App. 121; 46 L. J. P. C. 5.

132. Marriage—Nullity of—*Ordonnance* of Louis XIII, Nov. 26, 1639, art. 6—Strict interpretation of—Evidence of contracting capacity.
Scott v. *Paquet*, L. R. 1 P. C. 552; 36 L. J. P. C. 65.

133. Miner, placer, rights of as to renewal of grant—Dominion Lands Act, Revised Statutes of Canada, c. 54, s. 47—Mining regulations of 1889, s. 17—Percentage, power of Governor in Council to require payment of—Reservation which owner in fee entitled to make out of grant.
Chappelle v. *Reg.*; *Carmack* v. *Same*; *Tweed* v. *Same*, L. R. (1904) A. C. 127; 73 L. J. P. C. 18.

134. Mortgage—Right to make payments to bar foreclosure—Statute of Limitations—Consolidated Statutes of New Brunswick, c. 84, ss. 29, 30.
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135. Mortgagor and mortgagee—Rights of before Canada Act, 7 Will. 4, c. 2—Rights since—Discretion given to court to allow redemption.
Smyth v. *Simpson*, 7 Moo. P. C. C. 205.

136. Mortgagor and mortgagee—Notice—Right of intervention—Civil Procedure Code, s. 154.
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137. Mortmain—Warranty—Vendor of land.
Chaudière Gold Mining Co. v. *Desbarats*, L. R. 5 P. C. 277; 42 L. J. P. C. 73.

138. Negotiable instrument—Civil Code of Lower Canada, arts. 776, 2349—Essential to gift—*Possession vaut titre*—Possession by agent of bank—Certificate producible when interest paid—Communication of reasons of judge below.
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139. Negotiable instrument—Promissory notes—Transfer of on account of creditor—*En déconfiture*—*Saisée arrêt* issued by other creditors—Attachment of notes—Validity of transfer.
Hutchinson v. *Gillespie*, 4 Moo. P. C. C. 378.

140. New trial—Damages—Misdirection—Negligence—Civil Procedure Code, s. 426, sub-s. 11.
Lambkin v. *South-Eastern Railway Co.*, L. R. 5 App. 352.

141. Non-feasance, damages for—Mandamus—Notice in writing—Remedy by arbitration—Ontario Municipality Act of 1887, Revised Statutes of Canada, c. 184.
Corporation of Raleigh v. *Williams*, L. R. (1893) A. C. 540; 62 L. J. P. C. 1.

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142. *Nouvel œuvre, action en dénonciation de*—Only during progress of work—Old French law—Right of public offices to sue on behalf of public for demolition of work erected on public domain without licence—Actual damage not necessary—Judgments of dissenting judges written after judgment delivered and sent to England for appeal—Condemnation of such course.
Brown v. *Gugy*, 2 Moo. P. C. C., N. S., 341. *Vide post*, 181.

143. Parish *fabrique*—Rights of parishioners—Power of Marguilliers—Competency to bring or authorize action.
Curé de Verchères v. *Corporation of Verchères*, L. R. 6 P. C. 330; 44 L. J. P. C. 34.

144. Parishes, canonical erection of—Civil recognition of—Proceedings for before commissioners of diocese—No jurisdiction in court of justice to review or control—Revised Statutes of Quebec, ss. 3373, 3380—Objection to formation of new parish on ground that one of old parishes in debt, valid.
Alexandre v. *Brassard*, L. R. (1895) A. C. 301; 64 L. J. P. C. 83.

145. Partnership—Loan by one of three partners—Partnership not thereby constituted between firm and borrower—Civil Code of Lower Canada, arts. 1831, 1855.
Singleton v. *Knight*, L. R. 13 App. 788; 57 L. J. P. C. 106.

146. Patent—Alleged infringement—Coupler with steam-tight fasteners and automatic separator—New combination of known features.
Consolidated Car Heating Co. v. *Came*, L. R. (1903) A. C. 509; 72 L. J. P. C. 110.

147. Patent, Canadian, expiry of—Foreign patent for same invention existing during continuance of Canadian patent, expiry of—Patent Act, c. 61 of Revised Statutes of Canada, s. 8, amended by Canadian Act 55 & 56 Vict. c. 24, s. 1—British patent foreign patent.
Dominion Cotton Mills Co. v. *General Engineering Co. of Ontario*, L. R. (1902) A. C. 570; 71 L. J. P. C. 119.

148. Penal action—Foreign judgment in—Distinction between penalties recoverable at instance of duly authorized official of State whose law infringed or by common informer, and those recoverable at instance of private person—International law, rule of—Recovery of latter class of penalties not forbidden by—Duty of court below to decide for itself whether statute in question penal within meaning of international rule so as to oust its jurisdiction—Court not bound by interpretation adopted by foreign court.
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149. Petition of right—Appeal lies from decision of Court of Queen's Bench for Lower Canada on to H.M. in Council.
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150. Petition of right—Breach of contract by Crown—Acts or omissions of Crown officials, immaterial which—Damages—39 Vict. c. 27 (Canada)—37 Vict. c. 16 (Canada).
Windsor and Annapolis Railway Co. v. *Reg. and Western Counties Railway Co.* L. R. 11 App. 607; 55 L. J. P. C. 41.

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151. Pilotage, compulsory—Canadian statutes, 27 & 28 Vict. c. 13, s. 14; 27 & 28 Vict. c. 58, s. 9; to be read together—Exoneration of owner of vessel—Enactment of penalty, effect of.
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152. Pledge of goods in bond for advances—Customs to hold for pledgees—*Fi. fa.* against goods by judgment creditor of borrowers—Constructive delivery to pledgees.
Young v. *Lambert*, L. R. 3 P. C. 142; 6 Moo. P. C. C., N. S., 406; 39 L. J. P. C. 21.

153. Pledge—Inability to restore—Tender of debt secured by—Not insufficient under art. 1975 of Civil Code, giving right to detain for other debts of owner—Unilateral contract—Intention of signatories to limit for common benefit claims—Effect of controlled by such intention.
Senécal v. *Pauzé*, L. R. 14 App. 637.

154. Possessory action—Nature of possession required to maintain—Code of Civil Procedure (Lower Canada), ss. 946, 947, 948, 52.
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155. Power of one party to another in writing—Necessary execution of by deputy—Authority of agent to appoint deputy.
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156. Power of sale by usufructuary—Formalities—Construction—Condition annexed by court on unnecessary application for authority to sell land.
Leclère v. *Beaudry*, L. R. 5 P. C. 362.

157. Practice—Code of Civil Procedure, arts. 1178, 798, 801—Interlocutory judgment—Right of appeal.
Goldring v. *La Banque D'Hochelaga*, L. R. 5 App. 371; 49 L. J. P. C. 82.

158. Precious metals, right of Province to—Conveyance of public lands—British North America Act, 1867, s. 109.
Attorney-General of British Columbia v. *Attorney-General of Canada*, L. R. 14 App. 295.

159. Prerogative of Crown—Relations between Crown and Provinces—British North America Act, 1867—Winding up of bank—Priority of provincial government over other simple contract creditors.
Liquidators of Maritime Bank of Canada v. *Receiver-General of New Brunswick*, L. R. (1892) A. C. 437; 61 L. J. P. C. 75.

160. Prescribed time, expiration of—Right not extendible by procedure clause presupposing and regulating exercise of existing right of action—42 & 43 Vict. (Quebec) c. 53, s. 12—Civil Procedure Code, s. 3.
Déchène v. *City of Montreal*, L. R. (1894) A. C. 640; 64 L. J. P. C. 14.

161. Prescription—Action by seigneur—Title—Possession—6 Geo 4, c. 59—Surrender to and regrant *uno flatu* by the Crown—Ancient French law—Adverse possession enuring in favour of party deriving through predecessor in possession—Transfer how evidenced.
Macdonald v. *Lambe*, L. R. 1 P. C. 539; 36 L. J. P. C. 70.

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162. Prescription—Evidence of—*Action en bornage*—Boundary line—Construction of deeds and evidence—Mention of quantity in deed—Not an ascertained piece accurately described containing so much "or thereabouts."
Herrick v. *Sixby*, L. R. 1 P. C. 436.

163. Principal and agent—Bank manager—Misapplication of funds—Ordinary course of bank business—Negligence.
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164. Principal and agent—Marine insurance by agent—Right of undisclosed principal to sue in own name.
Browning v. *Provincial Insurance Co. of Canada*, L. R. 5 P. C. 263.

165. Principal and agent—Power of attorney, effect of—Power to borrow must be express—Indorsement of bills "*per pro*"—Taker set on inquiry as to extent of agent's authority—*Bonâ fide* holder not affected by abuse of authority where given.
Bryant, Powis and Bryant v. *La Banque du Peuple*; *Same* v. *Quebec Bank*, L. R. (1893) A. C. 170; 62 L. J. P. C. 68.

166. Principal and agent—*Son procureur général et spécial*—Liability of principal—Civil Code of Quebec, 181.
La Banque d'Hochelaga v. *Jodoin*, L. R. (1895) A. C. 612; 64 L. J. P. C. 174.

167. Principal and surety—English and Canadian law identical—*Acte de cautionnement*—Special recitals followed by general operative words—Generality not controlled.
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168. Principal and surety—Prolongation of time—Discharge of surety—Old French law—Bill of exchange—Nature of by French law.
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169. Promissory notes—Indorsement as co-sureties—Liability of indorsers to equal contribution *inter se*.
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170. Public Lands Act of 1869, s. 16—Location ticket, rights of holder of—Timber cutting licensee, protection against—Forest Act of 1883.
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171. Public Schools Act of Manitoba, 1890—Abolition of denominational system of public education—Validity of Act—Constitution Act of Manitoba, 1870 (33 Vict. c. 3, Dominion Statute).
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172. Public Schools Act of Manitoba, 1890—Appeal against by Roman Catholic minority to Governor-General—Power of Governor-General to make remedial orders—Supplemental rather than repealing legislation—Dominion Statute, 33 Vict. c. 3, s. 22, sub-ss. 2, 3.
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173. Quasi-contract—Civil Code, art. 1041—*Commencement de preuve*, what. *Price* v. *Neault*, L. R. 12 App. 110; 56 L. J. P. C. 29.

174. Railway—Authority to use streets to construct upon—Limit of privilege—Canadian Act, 24 Vict. c. 83—Ontario Act, 53 Vict. c. 105. *Toronto Street Railway Co.* v. *Corporation of City of Toronto* L. R. (1893) A. C. 511; 63 L. J. P. C. 10.

175. Railway—Construction of—Embankment giving way—Presumption of its insufficiency—Absence of rebutting evidence—Non-direction of jury by judge—Ground for new trial, when—Rule as to precaution in permanent works against extraordinary external violence—Canadian Act, 22 Vict. c. 13, s. 57—Appealable value—Adding costs to bring case within. *Great Western Railway of Canada* v. *Braid*; *Great Western Railway of Canada* v. *Fawcett*, 1 Moo. P. C. C., N. S., 101.

176. Railway Act, 1868 (31 Vict. c. 68), s. 7, sub-s. 6; s. 9, sub-ss. 10, 17—Validity of award—Compensation—Invalid transfer by railway company—Quebec Act, 39 Vict. c. 2—Power of provincial legislature. *Bourgoin* v. *Compagnie du Chemin de Fer de Montréal, &c.*, L. R. 5 App. 381; 49 L. J. P. C. 68.

177. Railway Act, 1888 (51 Vict. c. 29)—Arbitration under—Appeal from award under s. 161, sub-s. 2—Review of award by court as though judgment of subordinate court. *Atlantic and North-West Railway Co.* v. *Wood* L. R. (1895) A. C. 257; 64 L. J. P. C. 116.

178. Railway Committee of Privy Council, powers of—Canadian Railway Act (51 Vict. c. 29), s. 262, sub-ss. 3, 4. *Grand Trunk Railway Co. of Canada* v. *Washington*, L. R. (1899) A. C. 275; 68 L. J. P. C. 37.

179. Railway company—Advances to for completion of connected railway in United States of America—*Ultra vires*. *Commercial Bank of Canada* v. *Great Western Railway Co. of Canada*, 3 Moo. P. C. C., N. S., 295.

180. Railway company—Grants to of Dominion lands as subsidy—No reservation by Crown of mines and minerals except gold and silver—Canadian Act. 53 Vict. c. 4—Order in Council thereunder—Dominion Land Act, 1886, and Regulations of 1889 thereunder—Non-application of to grants not by way of sale. *Calgary and Edmonton Railway Co.* v. *Reg.* L. R. (1904) A. C. 765; 73 L. J. P. C. 110.

181. Railway company—Railway Act, 14 & 15 Vict. c. 51—Consolidated Statutes of Canada, 22 Vict. c. 66—Notice—Compensation—*Action en dénonciation de nouvel œuvre*. *Jones* v. *Stanstead, &c., Railway Co.*, L. R. 4 P. C. 98; 41 L. J. P. C. 19. (*Vide ante*, 142.)

182. Railway company—Right of to commence operations—Dominion Act, 46 Vict. c. 24—Order of railway committee, effect of—Conditions precedent—Consolidated Railway Act, 1879. *Corporation of Parkdale* v. *West*, L. R. 12 App. 602; 56 L. J. P. C. 66.

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183. Railway—Electric cars personal estate—Court of Revision and court in appeal from, no jurisdiction in to validate assessment, only as to amount of assessment.
Toronto Railway Co. v. *Corporation of Toronto*, L. R. (1904) A. C. 809; 73 L. J. P. C. 120.

184. Railway incorporated 1873 by Ontario statute—Declared by Dominion statute, 47 Vict. c. 60, in 1884 to be a work for general advantage of Canada—Sale of in mortgage suit under Dominion Act, 47 Vict. c. 24, ss. 14, 15, 16, re-enacted by Dominion Railway Act, 51 Vict. c. 29.
Central Ontario Railway v. *Trusts and Guarantee Co.*, L. R. (1905) A. C. 576; 74 L. J. P. C. 116.

185. Railway—Liability of to seizure and sale—Dominion Act, 46 Vict. c. 24—Quebec Act, 43 & 44 Vict. c. 49, s. 11—Proviso as to pending suits—Applicability of to proceedings in execution.
Redfield v. *Corporation of Wickham*, L. R. 13 App. 467; 57 L. J. P. C. 94.

186. Railway, what part of taxable property—Quebec Act, 40 Vict. c. 60, ss. 323, 326, 327—Special leave to appeal—Ground on which granted not to be abandoned at hearing.
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187. " Railway, whole operation of "—Limits to meaning of—Civil Code of Lower Canada, art. 1018.
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188. Ratification—Illegality of original transaction—Necessity of full knowledge.
La Banque Jacques-Cartier v. *La Banque d'Epargne de la Cité et du District de Montréal*, L. R. 13 App. 111; 57 L. J. P. C. 15.

189. Representation of the four original provinces in Dominion House of Commons—Readjustment of after decennial census—British North America Act, 1867, ss. 51 (sub-s. 4), 3, 146—" Aggregate population of Canada " includes all the provinces subsequently incorporated and admitted into Union by Order in Council under s. 146—Prince Edward Island's representation at admission into Union reducible under s. 51, sub-s. 4, though not previously increased.
Attorney-General for Prince Edward Island v. *Attorney-General for Dominion of Canada; Attorney-General for New Brunswick* v. *Same*, L. R. (1905) A. C. 37; 74 L. J. P. C. 9.

190. *Res judicata*—" *Transaction* "—Specific performance—Powers of *avoué*.
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191. Riparian owner, rights of to use of water flowing past his land—Rights of owner above and below—Identity of laws of England and Lower Canada on these points.
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192. Riparian owner—Navigable river—Floating wharf and boat-house—Navigation not obstructed—Damages for interference with stream, right to.
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193. Riparian proprietor on navigable river—Sale by of water-power artificially created valid.
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194. Riparian proprietors—Right to flow of water from land—Accumulation of flow—Aggravation of servitude—Civil Code of Quebec, s. 501—Consolidated Statutes for Lower Canada, c. 51.
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195. Riparian proprietors—Water—French law in Quebec—*Droit d'accès et de sortie*—Navigable rivers—Obstruction to navigation—Damage.
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196. Riparian rights—River tidal and navigable—Obstruction to *accès et sortie*—Quebec Railway Consolidation Act, 1880, s. 9—No right given by to railway company to inflict damage on land not taken without compensation—Liability of railway company to action when steps not taken under Act of 1880 to authorize their actions.
North Shore Railway Co. v. *Pion*, L. R. 14 App. 612; 59 L. J. P. C. 25.

197. Seigneur, rights of to water of unnavigable river—Right of co-seigneur to divert for his exclusive use.
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198. Sale of goods by weight or measure—Acts remaining to be done—Identity of old French and English laws as to measure of damages—Power to reject or modify pleadings—Election by plaintiff of form of action.
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199. Sale of *immeuble* by sheriff—Duty of vendor to give possession—Rights of purchaser.
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200. Sale of specific goods—Vesting of property—Seller's right to price—Non-vesting till something done by seller, or waived—Law of England and Canada alike.
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201. Sale of timber—Delivery prevented by storm—Action to recover purchase-moneys, loss by repurchase, and damages for breach of contract, held maintainable—Completion of sale—Transfer of property—Risk—Effect of taking possession of part after day named for delivery of whole, and at different place—Old French law.
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202. Sale of timber in possession of guardian or garnishee—Contract for—Construction of.
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203. Satisfaction—Promise to pay sum to plaintiff if she married promisor's adopted son—Non-claim during promisor's life—Provision by promisor *inter vivos* for plaintiff, his son, and their family—Evidence of cousins-german to party—Admissibility of, *quære*—Practice—Transmission on petition of originals of documents to compare handwriting.
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204. Servitude, real—Civil Code, arts. 499, 553, 554—Obligation to allow and repair a road—Prescription.
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205. Sheriff, clerk of—Action by sheriff against clerk's representatives for account—Held not to lie—Abatement of appeal on death of respondent, and renunciation of succession by heirs—Curator—Appeal revived against.
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206. Ship—Compulsory pilotage—Exemption from responsibility while in charge of pilot—Canadian statutes, 27 & 28 Vict. c. 13, s. 14; c. 58, s. 9—Enactment of penalty, effect of.
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207. Ship, contract to build—Mercantile house at N. directs house at Q. to make—N. house to send rigging—Contract entered into—N. house direct correspondent at L. to send rigging—Rigging sent—Delivered to Q. house—Property vested in N. house—Right of Q. house to retain against L. correspondent for lien for advances to builders, &c., though before delivery they had obtained assignment of ship from builders to themselves, and registered in name of one of their partners.
Rogerson v. *Reid*, 1 Knapp, 362.

208. Special verdict of jury, what—Sufficiency of proof of negligence more than a year before cause of action.
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209. Specific performance of agreement for a lease—Non-fulfilment of engagements.
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210. Statutory authority, proper execution of—Non-liability for damage—Sparks from locomotive—Civil Code of Lower Canada, art. 356—Dominion Railway Act, ss. 92, 288—Special leave to appeal on terms as to costs.
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211. Steel rails, import of—Whether dutiable depends on their weight solely, not on the character of the track—railway, street railway, or tramway—for which intended.
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212. Stockbroking transactions—"Commercial matters"—Civil Code of Quebec, art. 1233—54 Vict. c. 45, s. 2—Admission by defendant in deposition sufficient commencement of proof in writing—Civil Code, art. 1233 (7)—Secondary evidence without notice to produce—Civil Code, art. 1233 (6)—Stockbroker's authority on Stock Exchange terms.
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213. Succession devolving under laws of Ontario—Succession Duty Acts of Quebec not applicable to.
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214. Temperance Act (Canada) 1864, s. 17—Permissive not imperative.
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215. Timber limits—Warranty on sale—Prior licences—Consolidated Statutes of Canada, c. 23.
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216. Timber, right to float down streams—Right to use improvements on stream without compensation—Canadian Act, 12 Vict. c. 87, s. 5.
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217. Tolls, power to levy—Canadian Act, 20 Vict. c. 227, s. 16—22 Vict. c. 124—Reasonableness of charges, principle as to.
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218. Trade—Power to regulate and govern—Power to prohibit not implied or included.
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219. Trade-mark—"Caledonia water"—No exclusive right to name of local source as trade mark.
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220. Trade name—Dissolved company—Use of name of.
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221. "*Transaction*"—Consideration—Mistake in law—Deceit—Mistake of fact—Old French law.
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222. Trust, holder of shares in—Transfer of the shares by holder—Notice—Liability of transferee—Law of Quebec.
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223. Trustee—Canadian Act, 13 & 14 Vict. c. 84—Toronto, Simcoe, and Lake Huron Railway—Issue of debentures by Corporation of City of Toronto—Mayor and co-partner making profit of debentures—Trustee for corporation—Objection for want of parties not taken below—Suit not defective of appeal.
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224. Trustees as distinct from mandatories, right of suit by—Law of Canada, C. C. P. art. 19.
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225. Tug—Vessel in tow—Not ordering tug to stop in fog—Running aground of vessel—Contributory negligence.
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226. Turnpike roads of Quebec—Debentures of—Ordinance, 4 Vict. c. 17—Canadian Act, 16 Vict. c. 235—Non-liability of Province of Canada.
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227. Tutor—Power by old French law to alienate ward's property—Inventory—Administrative care in protection and management—No sale of immovable or mixed property without sanction of court—Nor of movables with certain exceptions—Bank shares not within the exceptions.
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228. Tutor and minor—Extinguishment of claims by release or conduct operating as release—Assignment by minor to tutor—Lapse of years—Dealing amounting to relase of claims after majority—Death of tutor—Practice—Documents improperly included in transcript—Non-objection to—Attempt to take advantage of on appeal—Refusal to rehear appeal.
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229. Usury laws—Loan—Retention of bonus or premium—Agent of lender—Old French law—Civil Code, arts. 1570, 1485—17 Geo. 3—c. 3, s. 5—16 Vict. c. 80 (Canadian Act).
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230. Wife's mortgage of separate property for husband's benefit void—*Onus probandi* that not so borrowed on lender—Civil Code of Lower Canada, art. 1301.
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231. Will—Adulterine bastards—Limitation by way of substitution—Time when capacity of substitute determined.
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232. Will—Annuity—Substitution—Accumulations.
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233. Will—Degrees of substitution—Civil Code of Lower Canada, arts. 932, 963.
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234. Will—Execution—*Coutume de Paris*—Notary.
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235. Will—Forfeiture clause in case of litigation—*Jugement définitif*—Civil Code, arts. 760, 831—Penal clause only practically effectual where will unsuccessfully contested.
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236. Will—Gift to trustees for corporation thereafter to be formed—Civil Code, arts. 869, 366, 836, 838—Devise, not to trustees with power of perpetual succession, but to trustees directed to convey to corporation lawfully created with power to possess—Lapse of gift—Mortmain—Gift on implied condition, fulfilment of which renders it lawful.
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237. Will—Legacy by privilege of *hypothèque* by ante-nuptial contract—Produce of sale under execution of husband's real estate in hands of sheriff—Husband sole executor and residuary legatee of wife—Property included in marriage contract—Priority.
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238. Will of married woman in English—"Children"—Not construed as "enfants" to include grandchild.
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239. Will—Power to apportion amongst a class—Power of exclusion—Illusory appointments.
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240. Will—Quebec Act—Power to devise or bequeath by will executed either according to Canadian or English law—Will invalid by French law, not executed according to Statute of Frauds so as to pass freeholds in England, not valid to pass lands in Canada, though good to pass copyhold and leasehold in England.
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241. Will—Restraint on alienation—Seizure in execution—Invalidity of restriction.
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242. Wills before Civil Code—Imperfect testamentary paper—Probate—Competency of heir to impugn will—Introduction of English law by 14 Geo. 3, c. 83, s. 10—Nuncupative wills—Oral evidence—Colonial Act, 41 Geo. 3, c. 4, s. 2.
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1. Corporation, liability of—Acts done by officers under corporation's direction—Accident to bridge under corporation's control—Municipal Act, 55 Vict. c. 33—Absence of bye-law under no defence—Question not raised before jury not to be raised on appeal.
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2. Free miner's certificate—Placer Mining Act, 1891 (54 Vict. c. 26)—47 Vict. c. 14—Right of free miner to mine for gold and other precious metals.
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3. Income—British Columbia Assessment Act, 1897 (Revised Statutes, c. 179)—All gains and profits derived from personal exertions, fixed or fluctuating, certain or precarious.
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5. Legislature of Dominion, power of to legislate for provincial Crown property—British North America Act, 1867, ss. 91, 92, 108—Dominion Act, 44 Vict c. 1, s. 18 *a*, transcontinental railway incorporated by —Provincial foreshore—Previously existing rights of passage, obstruction of.
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6. Legislature, powers of—Cattle Protection Acts, 1891, 1895—Responsibility cast on a Dominion railway company—*Ultra vires.*
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7. Legislature, provincial, powers of—Naturalization, right to determine how to be constituted reserved to exclusive jurisdiction of Dominion Parliament by British North America, s. 91, sub-s. 25—Right to determine what privileges, as distinguished from necessary consequences, to be attached to it, belongs to provincial legislature under s. 92, sub-s. 1—British Columbia Provincial Elections Act, s. 8, disqualifying Japanese from voting, not *ultra vires.*
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8. Legislature, provincial, powers of—Coal Mines Regulation Act, 1890, s. 4—Prohibition of employment of Chinamen, *ultra vires*—British North America Act, 1867, ss. 91 (sub-s. 25), 92 (sub-ss. 10, 13)—Naturalization and Aliens.
   Union Colliery Co. of British Columbia v. *Bryden*, L. R. (1899) A. C. 580; 68 L. J. P. C. 118.

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3. Railway—Exclusive right of to portions of streets actually occupied—Right to refusal of other streets for railway purposes—No monopoly constituted in any streets—Query if concession of monopoly *ultra vires* of municipal council.
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2. Banker and customer—Initialling by bank of cheque drawn on it—Certificate funds of drawer sufficient—Acceptance of deposit of cheque so certified—Amount credited to drawer—No title acquired in cheque—No guarantee of payment by drawee bank.
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4. Crown debts—Priority of—58 Vict. c. 3—Debts due to Boards of Education—Education Acts, 1892, 1893—Boards not mere agents of the Government.
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8. Legislature—35 & 36 Vict. c. 45—Territorial dominion—Bays—Injunction—Exclusive use of territory for telegraphic communication—Act of Newfoundland, 17 Vict. c. 2.
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9. Legislature—House of Assembly—Power of arrest—Contempt committed out of the House.
Semble.—The House of Commons possesses this power only by virtue of ancient usage and prescription, the *lex et consuetudo parliamenti.*
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Quære, whether it can bestow upon it an authority—viz., that of committing for contempt—not incidental to it by law.
The principles of *Beaumont* v. *Barrett*, 1 Moo. P. C. C. 59, and *Burdett* v. *Abbott*, 14 East, 137, examined.
Kielley v. *Carson*, 4 Moo. P. C. C. 63.

10. Prerogative—Treaty—Interference with private rights to compel obedience to provisions of—Acts of State.
Walker v. *Baird*, L. R. (1892) A. C. 491; 61 L. J. P. C. 92.

11. Salvage services—Ship salved property of Crown—No action for salvage maintainable.
Young v. *SS. Scotia*, L. R. (1903) A. C. 501; 72 L. J. P. C. 115.

12. Whaling Industry Act, 1902—Licences under only granted by Governor as prescribed by—Receipt for licence fee not licence nor evidence of contract to grant licence.
Newfoundland Steam Whaling Co. v. *Governor of Newfoundland*, L. R. (1904) A. C. 399; 73 L. J. P. C. 69.

NOVA SCOTIA.

1. Arbitrator, appointment of in default of proprietor—Not a judicial act—Fresh notice not necessary—Revised Statutes of Nova Scotia (5th Series), c. 7, s. 19—Award of fixed sum as estimated damages for all works or occupation necessary to or required by mining lessee—Not bad for uncertainty.
Palgrave Gold Mining Co. v. *McMillan*, L. R. (1892) A. C. 460; 61 L. J. P. C. 85.

2. Assignment, deed of—Execution of—Effect of note appended to signature.
Exchange Bank of Yarmouth v. *Blethen*, L. R. 10 App. 293.

NOVA SCOTIA—*continued.*

3. Attorney and barrister of Supreme Court—Order suspending from practising for having addressed a letter to the Chief Justice reflecting on the judge and the administration of justice generally—Discharged by the Judicial Committee, as substituting a penalty and mode of punishment not the appropriate and fitting punishment for the offence—Letter written by a practitioner in his individual and private character as a suitor, in respect of a supposed grievance as suitor, or an injury done to him as such suitor, and having no connection whatever with his professional character, or anything done by him professionally, either as an attorney or barrister—Only customary punishment for contempt of court allowable—Professional punishment of indefinite suspension for an act not done professionally, and not *per se* rendering the party committing it unfit to remain a practitioner of the court, not permissible.
In re Wallace, L. R. 1 P. C. 283; 36 L. J. P. C. 9.

4. Contract, validity of—Sale of land—Covenant running with—Easement—Agreement by vendor that adjoining land "should never be hereafter sold, but left for the common benefit of both parties and their successors."
Discretion of Privy Council to decide case without strict regard to precise terms of pleadings.
McLean v. *McKay*, L. R. 5 P. C. 327.

5. County Incorporation Act—Non-feasance—Claim for damages not sustainable.
Municipality of Pictou v. *Geldert*, L. R. (1893) A. C. 524; 63 L. J. P. C. 37. *Cf.* Gibraltar, 17; New South Wales, 131, 132.

6. Foreclosure suit—Amendment of pleadings—Nova Scotia Revised Statutes, pt. 3, ch. 134, tit. 36, ss. 62, 63.
Wallace v. *McSweeney*, L. R. 2 P. C. 180; 37 L. J. P. C. 9.

7. House of Assembly—Jurisdiction of—Immunity of members of—Voting for order of imprisonment—Revised Statutes, 5th Series, c. 3, ss. 20, 26, 29, 30, 31—British North America Act, 1867, s. 92.
Fielding v. *Thomas*, L. R. (1896) A. C. 600; 65 L. J. P. C. 103.

8. Lands, rival claims to—Separate streams of title from distinct grants from Crown—Only material act of ownership under one, entry by a third party relinquishing possession on judgment of ejectment against him—Under other, continuous possession since 1815, uninterrupted except the above-mentioned entry—Presumption of valid grant—Adverse possession amounting to bar under Colonial Statute of Limitations.
Des Barres v. *Spey*, 29 L. T., N. S., 592; 22 W. R. 273.

9. Lease, right to—Priority of application—Nova Scotia Revised Statutes, 4th Series, c. 9.
Mott v. *Lockhart*, L. R. 8 App. 568; 52 L. J. P. C. 61.

10. Legislation—British North America Act, 1867, s. 108—Passing of Nova Scotia railways to and vesting of in Dominion of Canada—Obligation under Nova Scotia Act, 30 Vict. c. 36—Power of Dominion Parliament—Construction of Dominion Act, 37 Vict. c. 16.
Western Counties Railway Co. v. *Windsor and Annapolis Railway Co.*, L. R. 7 App. 178; 51 L. J. P. C. 43.

NOVA SCOTIA—*continued.*

11. Libel—Demand under Canadian Insolvent Act, 1869—Writ of *capias*—Malicious prosecution—Misdirection—Privileged communication—Legal proceeding.
Bank of British North America v. *Strong*, L. R. 1 App. 307.

12. Licence—Application for renewal—Repeal of section authorizing renewal—Power to renew gone—No "accrued right" in reference to renewal.
Reynolds v. *Attorney-General for Nova Scotia*, L. R. (1896) A. C. 240; 65 L. J. P. C. 16.

13. Marine insurance—Actual total loss—Sale of ship by order of court—Proceeds less than salvage remuneration—Derelict.
Cossman v. *West*; *Cossman* v. *British America Insurance Co.*, L. R. 13 App. 160; 57 L. J. P. C. 17.

14. Mistake, payment by—Liability to refund—Privity.
Colonial Bank v. *Exchange Bank of Yarmouth, Nova Scotia*, L. R. 11 App. 84.

15. Salvage—*Quantum* to salvors—Reduction.
Owners of the Thomas Allen v. *Gow*, L. R. 12 App. 118.

16. Will—Codicil confirming held not to confirm also intermediate codicil.
McLeod v. *McNab*, L. R. (1891) A. C. 471; 60 L. J. P. C. 70.

NEW BRUNSWICK.

1. Collision—Negligence by complaining vessel—Non-excusability of party in default.
Emery v. *Cichero*; *The Arklow*, L. R. 9 App. 136; 53 L. J. P. C. 9.

2. Legislative power, distribution of—British North America Act, 1867, s. 92, sub-s. 2—Provincial Act, 33 Vict. c. 47.
Dow v. *Black*, L. R. 6 P. C. 272; 44 L. J. P. C. 52.

3. Principal and agent—Misrepresentation by agent—No express command or privity of principal—Liability of principal—Principal a company.
Mackay v. *Commercial Bank of New Brunswick*, L. R. 5 P. C. 394; 43 L. J. P. C. 31.

4. Railroad, contract to make—Breach—Jurisdiction at law or in equity—Inquiry as to damages.
St. Andrews and Quebec Railway Co. v. *Brookfield*, 13 Moo. P. C. C. 510.

5. Railway company holding lands—Debentures of equitable mortgage on lands—Sale of lands by judgment creditors—Interest taken by judgment creditors in the lands—Freeholds sold under *fi. fa.*
Wickham v. *New Brunswick and Canada Railway Co.*, L. R. 1 P. C. 64; 35 L. J. P. C. 6.

PRINCE EDWARD ISLAND.

1. Attorney in Supreme Court—Arrest on mesne process—Privilege—Suspension from practice—No evidence—Order rescinded for irregularity.
   In re Monckton, 1 Moo. P. C. C. 455.

2. Practice—Appeal Court in Island—No appeal from Supreme Court direct to Judicial Committee—Allowance of Appeal to Governor and Council of Island advised—Appealable value.
   In re Cambridge, 3 Moo. P. C. C. 175.
   See now *ante*, p. 196.

CAPE BRETON.

Legality of annexation to Nova Scotia.
In re Island of Cape Breton, 5 Moo. P. C. C. 259.

MEDITERRANEAN COLONIES.

GIBRALTAR.

1. Appeal, right to—Objection to verdict—Neglect to move court below for new trial according to the practice there—No power in H.M. in Council to alter or set aside verdict—Refusal to advise H.M. to direct new trial.
   Dagnino v. *Bellotti*, L. R. 11 App. 604.

2. Bill of exchange—Presentment for acceptance—"This I accept, and you may call for it when you like"—Good parole acceptance in colony—Decision of court below upon question of evidence not binding on Judicial Committee, although in general followed—Conviction of witness for perjury no ground for reversing the judgment on appeal—Costs against appellant attempting to make use of conviction of this description.
   Canepa v. *Larios*, 2 Knapp, 276.

3. Collision—Contributory negligence—18th rule.
   The William Frederick; The Byfoged Christensen, L.R. 4 App. 669.

4. Collision—Contributory fault—Issue of cannot be raised for first time in final Court of Appeal.
   Owners of SS. Pleiades v. *Owners of SS. Jane*, L. R. (1891) A. C. 259; 60 L. J. P. C. 59.

5. Collision—Steamer approaching sailing vessel, duty of—Contributory negligence.
   Beal v. *Marchais; The Bougainville; The James C. Stevenson*, L. R. 5 P. C. 316.

GIBRALTAR—*continued.*

6. Collision with sunken wreck in harbour—Transfer of control of wreck to port authority—Owners and wreck, liability of—No maritime lien in absence of owner's negligence—Colliding ship carefully and skilfully navigated—Irresponsibility of.
Owners of SS. Utopia v. *Owners and Master of SS. Primula; The Utopia*, L. R. (1893) A. C. 492; 62 L. J. P. C. 118.

7. Criminal jurisdiction and procedure—Appellant arrested in London sent to be tried at Gibraltar—Offence within jurisdiction of Morocco Consular Court—Concurrent jurisdiction—Right to trial at Gibraltar by jury.
Spilsbury v. *Reg.*, L. R. (1899) A. C. 392; 68 L. J. P. C. 66.

8. Ejectment—Owner—Real or personal estate—Conveyance by compromise.
Tudury v. *De Pina*, 15 Moo. P. C. C. 434.

9. Insurance—Plea by insurer that damages sustained by fire had not been ascertained in mode prescribed by their particular office—Damage fairly ascertained—Plea rejected.
Hadwin v. *Lovelace*, 1 Acton, 126.

10. Judge of inferior court—Disregard by of inhibition—No attachment for contumacy and contempt, unless disobedience wilful and proceeding from improper motives.
Inhibition to Judge of Vice-Admiralty Court at Gibraltar not to be disregarded at his discretion, though he may consider that he is acting for the benefit of all parties.
Decree made after appeal and inhibition served personally on judge held not such a contempt under the circumstances as to entitle owners to attachment against the judge, and costs and damages.
Barton v. *Field*, 4 Moo. P. C. C. 273. See *post*, 14.

11. Jurisdiction of Supreme Court of Gibraltar—Procedure of that court—Contract to advance money—Specific performance of refused—Damage for breach of—21 & 22 Vict. c. 27.
Larios v. *Gurety*, L. R. 5 P. C. 346.

12. Law of conquered colony—Charter under Great Seal instituting court—Laws of England to be measure of justice between parties—Court to hold pleas of what nature and kind soever, and to issue warrants of execution for putting parties into possession under its decrees—English law of real property substituted for ancient law of the conquered colony—Widow entitled to dower out of lands of late husband.
Law of conquered country alterable by king by proclamation or letters patent under the Great Seal, not solely by Order in Council.
Inhabitant of island ceded by Great Britain—To England after cession—Return to ceded island in which family had been left—Residence with them there for upwards of six years—Emigration to another country under the Government of Great Britain—Retention of character of British subject—Child born after the capitulation of the island, and before its final cession by treaty, not an alien.
Quære, whether an appellant, who wishes to avail himself of evidence

GIBRALTAR—*continued.*

not produced before the court below, must not, either in his petition of appeal or by a special petition for that purpose, pray that it may be received before the Judicial Committee.
Jephson v. *Riera*, 3 Knapp, 130.

13. Maritime lien—Vice-Admiralty jurisdiction—Necessaries—26 & 27 Vict. c. 24, s. 10, sub-s. 10.
Laws v. *Smith, The Rio Tinto*, L. R. 9 App. 356; 53 L. J. P. C. 54.

14. Slave Trade—5 Geo. 4, c. 113—Burden of proof of facts necessary to constitute liability to forfeiture or penalties upon prosecutor—Privileges given by s. 46 to seizors not for their benefit, but for their protection against liability to costs and actions on judge certifying, pursuant to 4 Geo. 3, s. 46, that there was probable cause for seizure.
Vessel seized in Port of Gibraltar—Allegation that she was engaged in carrying slaves—Forfeiture—Owners, master, and mate condemned in penalties—Judgment of the Vice-Admiralty Court of Gibraltar reversed—Evidence of the persons being slaves, or intended to be dealt with as slaves, doubtful—Owner, master, or mate not proved to be cognizant of that fact—Seizors to prove—Monition from Judicial Committee to Judge and Registrar of the Vice-Admiralty Court of Gibraltar to transmit proceeds arising from sale of vessel decreed to be forfeited, and sold after appeal inserted and inhibition issued and served—Whole amount of proceeds to be brought into court, not balance after deducting costs and fees incidental to seizure—Refusal to comply with such monition—Contempt—Attachment for, by Judicial Committee against the Judge, Registrar, and Marshal of Vice-Admiralty Court.
Barton v. *Reg.*, 2 Moo. P. C. C. 19. See *ante*, 10.

15. Slave trade—Receiving goods on board slave ship—Joint act of owner and master of vessel—Penalties given by 5 Geo. 4, c. 113, s. 7, joint, not several.
Owner of vessel subject of the Queen of Spain and resident at Cadiz—Vessel within British port—Liability to forfeitures and penalties under Slave Trade Abolition Act.
Del Campo v. *Reg.*, 2 Moo. P. C. C. 15.

16. Slave trade—Shipping goods to be employed in—Liability to penalty—Guilty knowledge of object of vessel—Conviction of felony under the Slave Trade Abolition Act, 5 Geo. 4, c. 113, s. 10—Appeal against a sentence in the Vice-Admiralty Court for penalties—Conviction previous to civil sentence—Undergoing punishment at time of appeal—Protest on ground of such conviction overruled.
Sherwill v. *The King*, 2 Moo. P. C. C. 1.

17. Statutory body, liability of—Non-feasance of—Damage occasioned by, claim for—Construction of statutes.
Sanitary Commissioners of Gibraltar v. *Orfila*, L. R. 15 App. 400; 59 L. J. P. C. 95. Cp. *New South Wales* 131, 132.

GIBRALTAR—*continued.*

18. Vicar-general of Roman Catholic Church at Gibraltar—Liability to account for fees received for administering offices of church—Fees by custom regulated by and subject to control of Assembly of Elders or Junta, of which he is the head, and disposed of by them for the general purposes of the church—Injunction against receipt of such fees by Vicar-general and directing him to replace in certain part of church the tariff or table thereof—Varied by dissolving injunction, and decreeing him to account as receiver for all sums paid to him on account of the same.

No jurisdiction in Judicial Committee to direct release of party imprisoned for contempt of court below, pending appeal respecting merits of suit.

Evidence not adduced in the court below, nor forming part of the transcript, admitted on motion to be used at hearing of appeal, subject to all just exceptions.

Hughes v. *Porral*, 4 Moo. P. C. C. 41.

MALTA.

1. Collision—Narrow channel—Admiralty Regulations, March 18, 1880, art. 21.

Scicluna v. *Stevenson, The Rhondda*, L. R. 8 App. 549.

2. Foreign judgment of competent court—Unimpeachable except for manifest error—Inapplicable *inter alios* unless *in rem*. *Dent* v. *Smith*, L. R. 4 Q. B. 414, followed.

Messina v. *Petrococchino*, 8 Moo. P. C. C., N. S., 375; L. R. 4 P. C. 144; 41 L. J. P. C. 27.

3. Judicial separation—Cruelty to child—*Ingiurie gravi*—Ordinance No. 5 of 1867, art. 46—Large discretion in tribunal having to judge of the facts—Not only acts but words designed to wound feelings of wife may amount to *ingiurie gravi*—Position of parties and habits and usages of the society in which they live to be regarded—Insults offered to the wife manifesting contempt of her in that character of special gravity, especially if offered in the presence of others—Wrongs of this description not to be estimated separately, but in combination one with another—Husband habitually treating his wife with harshness and insult—Keeping her in constant state of excitement and fear—Personal violence to adult daughter affecting her health during several months—Violence offered to daughter to be taken in conjunction with previous treatment of mother—Together constituting *ingiurie gravi* within art. 46—Treatment of daughter by father ground under Maltese law for demanding separation by wife—Wife remaining in house for several months—Daughter continuing to suffer from consequences of ill-treatment, requiring attention of mother—Departure of wife from husband's house on the first occasion of his leaving home—Matrimonial offences of husband not condoned.

Sant v. Sant, L. R. 5 P. C. 542; 43 L. J. P. C. 73.

4. Legitimation—Children *ex nefario coitu*—Jurisdiction—Considerations to govern exercise of—Ordinance of 1814.

Gera v. *Ciantar*, L. R. 12 App. 557; 57 L. J. P. C. 93.

MALTA—*continued.*

5. Mercantile instruments not to be unnecessarily strictly construed—Obvious and expressed intention to be effectuated—Charter-party—Identity of English and Maltese law.
Dimech v. *Corlett*, 12 Moo. P. C. C. 119.

6. Primogeniture—Deed—Construction of.
Apap v. *Strickland*, L. R. 7 App. 156.

7. Primogeniture—Deed of foundation of—Construction of.
Strickland v. *Apap*, L. R. 8 App. 106; 52 L. J. P. C. 1.

8. Primogeniture—Descent in exclusively male line derived from female—Descent of barony established as hereditary feud—Pragmatic of Philip 4, No. 34.
D'Amico v. *Trigona*, L. R. 13 App. 806; 58 L. J. P. C. 20.

9. Primogeniture—Presumption that prescribed order of succession is "regular," admitting females in default of male issue of last holder in that line.
Sceberras Trigona v. *Sceberras d'Amico*, L. R. (1892) A. C. 69; 61 L. J. P. C. 8.

10. Principal and agent—Defence of action on behalf of principal—Damages—Recovery of from principal—Conditions for—Agent exceeding authority—Waiver or ratification by principal—Costs of appellant below and on appeal allowed.
Frixione v. *Tagliaferro*, 10 Moo. P. C. C. 175.

11. Principal and agent—Liability of agent indorsing bill of exchange for principal—Liability of indorser to indorsee—Contract between, in what consisting.
Appealable value—Subject-matter under—Special leave to appeal.
Castrique v. *Buttigieg*, 10 Moo. P. C. C. 94.

12. Real estate, descent of—Partition of—Bye-law of Malta equally divisible among co-heirs of intestate—By Ordinances and Code in force in island, where property possessed in common cannot be "conveniently divided and without disadvantage," the same must be sold by auction—Suit for partition of villa residence with outhouses and ornamental grounds devolved by intestacy of late owner on his ten children—Opinion of court below, after reference to experts, not so divisible—Decree for sale by auction in its entirety, and subsequent division of amount realised in equal shares, confirmed by the Judicial Committee—*Semble*, not competent for parties in such suit to propose, at the hearing of the appeal, fresh reference to experts for purpose of suggesting another scheme for division of property in litigation.
Bugeja v. *Camilleri*, L. R. 3 P. C. 258.

13. Salvage remuneration—Exact ascertainment of salvor's losses, effect of on calculating.
Bird v. *Gibb*; *The De Bay*, L. R. 8 App. 559; 52 L. J. P. C. 77. Considered in *The City of Chester*, L. R. 9 P. D. 182; 53 L. J. P. D. & A. 90.

14. Salvage—Increase of—Derelict vessel and cargo.
Papayanni v. *Hocquard*, 4 Moo. P. C. C., N. S., 96.

MALTA—*continued.*

15. Trade-marks—Right to exclusive user—Infringement.
Somerville v. *Schembri*, L. R. 12 App. 453; 56 L. J. P. C. 61.

CYPRUS.

Legitimacy of Roman Catholic Ottoman subjects—Canon law of Roman Catholic Church, application of to ascertain—Legitimation subsequent to birth by marriage of parents authorized by papal dispensation—Hatti Humaïoun of 1856—Cyprus statute law of April 11, 1884—Regulation of succession by creed—Right to inherit result of establishment of legitimacy.
Parapano v. *Happaz*, L. R. (1894) A. C. 165; 63 L. J. P. C. 63.

WEST INDIAN COLONIES.

JAMAICA.

1. Administration—Intestate resident in England at death—Personal estate both in England and Jamaica—Distribution according to law of country where intestate resident at death—Grant in England of administration to person dying there—Grant in colonies to same person.
Burn v. *Cole*, Ambl. 415.

2. Administration suit—Order to pay legacy in—Registration of—Effect of—*Venditioni exponas*—Jamaica Act, 8 Vict. c. 48, to declare judgments a lien upon land, to abolish arrest in certain cases, and for other purposes.
Balfour v. *Watt*, 8 Moo. P. C. C. 190.

3. Administration suit—Reference to master as to what due and owing to parties to suit—Master's report—No exceptions taken to—Petition to court by party claiming sum of money for advances to infant, a party in the cause, and objecting to finding of master in not allowing for such advances—Reference to master whether any and what sum to be paid for advances—Irregular and reversed with costs in the court below, but without costs of the appeal as same relief might have been obtained on a re-hearing of the petition in the court below.
Thompson v. *Cartwright*, 3 Moo. P. C. C. 421.

4. Agency of estates—Jamaica Act, 28 Geo. 2, c. 19, s. 8—Charges by executors and trustees for the management of estates—No commission given by Act upon sale of an estate—Sale actually made and completed in island.
Henckell v. *Daly*, 1 Moo. P. C. C. 51.

5. Agents of estates—Jamaica Act, 24 Geo. 2, c. 19—Commission of 6 per cent. to agents, trustees, guardians, executors, &c., for management and disposal of rents and profits of an estate—Remuneration for trouble and responsibility of conducting business of merchant on island—Payable only to persons actually resident on island, and

JAMAICA—*continued.*

capable and willing to act in trusts of estate—Commission of 5 per cent. by the same Act for receiving and remitting moneys only claimable where receipts on payments actually made on island.

Semble, where a party is made a co-plaintiff, having no interest in one of the objects sought by his co-plaintiff, and the bill is sustainable only in respect of that object, it must be dismissed.

Denton v. *Davy*, 1 Moo. P. C. C. 15.

6. Agents—Consignment of cargo by request of purchasers to purchasers' factors—Purchasers indebted to factors—Further advance by factors to purchasers—Insolvency of purchasers—Repudiation of cargo and direction of factors to sell on arrival for benefit of vendor—Acquiescence of vendor—Subsequent claim to lien by factors—Waiver of—Appeal under 7 & 8 Vict. c. 69 direct from inferior court in Colony to Queen in Council.

Harrison v. *Scott*, 5 Moo. P. C. C. 357.

7. Attorney and agent of plantation—Advance of supplies by factor of —No privity constituted thereby between creditor and owner of estate—Deed entered into by owner of estate with trustees for payment of certain creditors therein enumerated—Creditors not parties—No lien created thereby on estate of debtor in favour of creditors named therein.

Steele v. *Murphy*, 3 Moo. P. C. C. 445.

8. Attorney and manager—Injunction obtained against by *cestui que trust* of moiety of produce of certain plantations and estates in Jamaica, prohibiting from shipping or consigning any portion of produce save as such *cestui que trust* should direct—Attorney trustee of same moiety—Injunction dissolved.

Israell v. *Rodon*, 2 Moo. P. C. C. 43.

9. Attorneys to absent proprietors of estates—Remuneration for performance of duties, including that of factorage—Commission of 6 per cent.—Appointment of other persons as factors—Attorneys to be looked to for payment for supplies to estates and commission.

Pennant v. *Simpson*, 1 Knapp, 399.

10. Arbitration respecting freehold estates and interests in land—Married women parties—Validity of award.

Strachan v. *Dougall*, 7 Moo. P. C. C. 365.

11. Bankruptcy Act, 1869, s. 39—Mutual dealings—Agent's authority not revoked till notice of act of bankruptcy—Receipt of money under—Right to set off debt thus incurred—Trustee's title, date of accrual of.

Elliot v. *Turquand*, L. R. 7 App. 79; 51 L. J. P. C. 1.

12. Bankruptcy—Jurisdiction to annul adjudication—Practice—Bankruptcy Law, 1879, s. 151—No application necessary under Act No. 17 of 1877, s. 10—Assignment of whole of debtor's property when not act of bankruptcy.

Administrator-General of Jamaica v. *Lascelles, De Mercado and Co.; In re Rees' Bankruptcy*, L. R. (1894) A. C. 135; 63 L. J. P. C. 70.

JAMAICA—*continued.*

13. Bishopric of Jamaica—Letters patent erecting—Jurisdiction of bishop to punish rectors, &c., according to laws and canons of Church of England—Refusal of rector to enter marriage on parish registry—Citation of by bishop—Entry made—Suspension of rector for previous refusal—Publication of suspension—Proceedings reversed as wholly irregular.
Bowerbank v. *Bishop of Jamaica*, 2 Moo. P. C. C. 449.

14. Blockade—Constitution of.
The Nancy, 1 Acton, 58.

15. Bonds yearly or half-yearly—Agreement—Law passed in pursuance of.
Jamaica Railway Co. v. *Attorney-General of Jamaica*, L. R. (1893) A. C. 127.

16. Contract—Negotiation by telegram—Incompleteness—Acceptance of offer not proved.
Harvey v. *Facey*, L. R. (1893) A. C. 552; 62 L. J. P. C. 121.

17. Costs—Action of trespass in Supreme Court—Damages laid above limit of jurisdiction of local courts—5 Vict. c. 26—Damages recovered below limit—Test of right to sue in Supreme Court and recover Supreme Court costs.
Emery v. *Binns*, 7 Moo. P. C. C. 195.

18. Escheated property, grant of—Non-prosecution by grantee of rights of Crown—Liability of grantee to account to Crown for rents and profits.
Mason v. *Attorney-General of Jamaica*, 4 Moo. P. C. C. 228.

19. Executor—Account of testator's estate—Jamaica statute, 15 Vict. c. 16—Executor of executor—Right of executor to have account of his executor's estate taken.
Smith v. *O'Grady*, L. R. 3 P. C. 311; 39 L. J. P. C. 63.

20. Executors—Compromise by of debt due by one of themselves—Fraud—Settlement in account—Liability of executors.
De Cordova v. *De Cordova*, L. R. 4 App. 692.

21. Fact, question of, not submitted to jury—New trial—Issue of fact as to variation of easement claimed—Code of Civil Procedure, s. 438.
Royal Mail Steam Packet Co. v. *George and Branday*, L. R. (1900) A. C. 480; 69 L. J. P. C. 107.

22. Governor, authority of—Act of State—Jurisdiction—Privilege—Pleading.
Musgrave v. *Pulido*, L. R. 5 App. 102; 49 L. J. P. C. 20.

23. Insolvency—Jamaica Insolvent Act, 11 Vict. c. 28, s. 67—Transfer, in contemplation of insolvency of estate, to creditor for benefit of such creditor within six months before declaration of insolvency—Fraudulent and void against official assignee—No evidence of fraudulent preference.
Nunes v. *Carter*, L. R. 1 P. C. 342; 36 L. J. P. C. 12.

24. Judgment creditor—Rights of against prior incumbrancer—Sale in lieu of foreclosure—Standing over of appeal for service of parties below.
Gordon v. *Horsfall*, 5 Moo. P. C. C. 393.

JAMAICA—*continued.*

25. Legislative Assembly—Power of punishing contempts—Committal of party guilty of publishing libellous paragraphs, which had been resolved a breach of the privileges of House, to custody of keeper of common gaol in county of Middlesex in Jamaica, to be detained during the pleasure of the House.
Quære, whether the warrant to the serjeant-at-arms, directing him to take the appellant into custody, justified him in committing such custody to the gaoler of the gaol in Middlesex.
Beaumont v. *Barrett*, 1 Moo. P. C. C. 59.

26. Libel, indictment for, found at assizes—Removal by *certiorari* to Supreme Court—Trial on civil side—Verdict of guilty—Judgment suspended pending application to Queen in Council—Petition for leave to appeal dismissed.
Quære, whether in absence of final judgment appeal will lie.
In re Levien, 10 Moo. P. C. C. 31.

27. Libel—Privileged communication—*Onus probandi* malice on plaintiff.
Jenoure v. *Delmege*, L. R. (1891) A. C. 73; 60 L. J. P. C. 11.

28. Marriage—Bond in contemplation of to mortgage land and raise money for purposes of settlement—Mortgage by way of settlement in pursuance of bond, including cattle, stock, and plantation implements—Cattle and stock not included in bond—Mortgage not able to enlarge provisions of bond.
Turner v. *Barclay*, 9 Moo. P. C. C. 264.

29. Mortgagor and mortgagee—Sale by mortgagee after previous sale to himself—Validity of—Extension of right to redeem—No duty on purchaser to give notice to mortgagor—Right of mortgagee to cost of improvements.
Henderson v. *Astwood*; *Astwood* v. *Cobbold*; *Cobbold* v. *Astwood*, L. R. (1894) A. C. 151.

30. New trial—Withdrawal of facts from jury—Misdirection.
Kingston Race Stand v. *Mayor and Council of Kingston*, L. R. (1897) A. C. 509; 66 L. J. P. C. 111.

31. Partnership—Taking accounts between three, A. B., A. B. C., B. C.—B. C. cannot charge commission for collecting debt due to the two other partnerships.
Whittle v. *McFarlane*, 1 Knapp, 311.

32. Pending suit in England—Subsequent suit in plantations for same matter—No bar.
Bayley v. *Edwards*, 3 Swanst. 703.

33. Practice—Act No. 41 of 1872, s. 19—Service of summons on a company domiciled abroad—"Persons residing out of Jamaica."
Royal Mail Steam Packet Co. v. *Braham*, L. R. 2 App. 381; 46 L. J. P. C. 67.

34. Practice—Motion by petition for discharge of receiver—Motion refused—Petition dismissed with costs—Directions engrafted on order of dismissal—Dismissal reversed—Order dismissing motion for settlement of accounts and payment over of balance, on ground that accounts not fully taken under original decree or balance ascertained, affirmed on appeal, but without costs.
Palmer v. *Barrett*, 1 Moo. P. C. C. 415.

JAMAICA—*continued.*

35. Principal and surety—Bond to pay collections of taxes for 1842—Arrears at date of bond for taxes collected in 1841—Appropriation of taxes collected in 1842 to paying off 1841 arrears—Liability of surety—Appeal under 7 & 8 Vict. c. 69 direct to Queen in Council.
Attorney-General of Jamaica v. *Manderson*, 6 Moo. P. C. C. 239.

36. Prison—Surgeon of district prison of St. Katherine—5 Will. 4, c. 8; 4 Vict. c. 26 of local legislature—Office during pleasure—Appointment of another in place of holder of office.
Special leave to appeal granted *ex parte* from order of Supreme Court at Jamaica issuing peremptory *mandamus*—Right to move upon counter petition to quash leave.
Hill v. *Reg.*, 8 Moo. P. C. C. 138.

37. Probate of testamentary paper in the nature of a codicil—Grant of by consent in common form—Not afterwards revocable on allegation that conditions on which such consent given not complied with, there being no proof of fraud or circumvention practised upon either Court or parties.
Nicol v. *Askew*, 2 Moo. P. C. C. 88.

38. Railway—Lands taken for—Compensation payable by Government—Conduct of assessment of by Government officer—Accommodation works to owners of lands taken—Agreements for within scope of officer's authority—Power to bind company thereby—Law 12 of 1889, ss. 20, 29.
West Indian Improvement Co. v. *Attorney-General of Jamaica and Fraser*, L. R. (1894) A. C. 243.

39. Stoppage *in transitu*—Confirmation of agent's act by principal.
Hutchings v. *Nunes*, 1 Moo. P. C. C., N. S., 243.

40. Trade-marks—Regulation of—"Club soda"—Use of words in way calculated to deceive—"Manufactured in Ireland by H.M. Royal letters patent"—Not representation that ingredients patented.
Cochrane v. *Macnish*, L. R. (1896) A. C. 225; 65 L. J. P. C. 20.

41. Usury—Mortgage debts on West India estates demurred against as usurious—Demurrer overruled as informal and contrary to usage—Question of usury not therefore fairly before court.
M'Anuff v. *Willis*, 1 Acton, 119.

42. Wharf—Liability of absentee owner of for negligence of agent in conduct of wharf—Jamaica Act, 7 Vict. c. 57.
Appeal allowed though subject under appealable value on account of public importance of question—Rule 1 of Order in Council, June 13, 1853, allowing costs to successful appellant, discretionary in Court, only to be allowed in special circumstances.
To entitle appellant to costs, application to be made at hearing.
Lindo v. *Barrett*, 9 Moo. P. C. C. 456.

43. Wife—Security by of husband's debts—Cancelment of—Fresh evidence, application for new trial on ground of refused—No application for discovery before trial.
Turnbull v. *Duval*, L. R. (1902) A. C. 429; 71 L. J. P. C.

JAMAICA—*continued.*

44. Will—Devise in fee—Revocation by codicil—Devise of same property without limitation—Fee or for life—Intention of testator.
Doe v. *Thompson*, 12 Moo. P. C. C. 116.

45. Will—Eldest son of my sister—Death of donee—Lapse of gift—Intestacy.
Amyot v. *Dwarris*, L. R. (1904) A. C. 268; 73 L. J. P. C. 40.

46. Will—Inrolment of decree by one of the defendants to suit for carrying into effect trusts of a will five months after decree, during infancy and absence of plaintiff from island, at cost of the estate—Not done with improper haste, infants being properly represented according to the practice of Jamaica—Order vacating the inrolment reversed.
Hyslop v. *Jones*, 3 Moo. P. C. C. 15.

47. Will—Invalid to pass real, valid to pass personal, estate—Slaves devisable as real estate—Act to abolish slavery, 3 & 4 Will. 4, c. 73—Compensation money—Personal estate.
Richards v. *Attorney-General of Jamaica*, 6 Moo. P. C. C. 381.

48. Will—Marriage and birth of child—Revocation of will made previous to marriage—Tacit condition annexed to will at the time of making that it is not to have effect, if the deceased have a wife, and child subsequently born—Such tacit condition to will of personal as well as real estate—Annexed at the time of making will, which speaks from that period and not from testator's death.
Israell v. *Rodon*, 2 Moo. P. C. C. 51.

49. Will—Mortgage by A. of estate in 1774—Annuity by will in 1775 to widow in lieu of dower—Subsequent mortgage of his interest by W., original mortgagee—Bill by R. in 1786 against W. and real and personal representative of A. for foreclosure—Decree in 1791 declaring that widow *bonâ fide* purchaser of annuity and entitled to be paid out of mortgaged estate—Suit not prosecuted—Death of widow in 1794—Bill by her representative in 1822 against heir of W. and others claiming under him and heirs and devisees of A. for payment of arrears of annuity during her lifetime, or for sale of estate and payment of arrears out of proceeds—Annuity not expressly charged on real estate of A.—Mere pecuniary legacy—Decree of 1791 erroneous.
When a Court of Equity is called upon to carry into execution a former decree, it is not bound to do so if, upon inquiry into the merits, it appears to have been erroneous.
Remedies for recovery of arrears held lost by length of time.
The mortgagor and his heirs only can sue the mortgagee for an account and redemption, unless it can be shown that there is collusion between them and the mortgagees.
White v. *Parnther*, 1 Knapp, 179.

50. Will—Trustee not acting in trusts of—Qualified and ready and willing to act—Title of to share of commission under the Jamaica Act, 24 Geo. 2, c. 19, s. 8.
Grant v. *Campbell*, 1 Moo. P. C. C. 43.

TURK'S AND CAICOS ISLANDS.

Power of attorney to possess and manage—Power coupled with interest—Parol evidence of admissible—Power revocable as containing no reference to special interest, not subservient or dependent on continuance of interest—No equitable defence to ejectment.

Frith v. *Frith*, L. R. (1906) A. C. 254; 75 L. J. P. C. 50.

BRITISH HONDURAS.

1. Constitution and government of—Acts of Colony, 16 Vict. c. 4; 20 Vict. c. 16; 21 Vict. c. 1—Agent of settlement in England—Cessation of political character of—Action for salary.

   Hodge v. *Attorney-General of British Honduras*, 2 Moo. P. C. C., N. S., 325.

2. Criminal proceedings—Conviction set aside—Order striking solicitor off roll reversed—Practice—Grounds for granting special leave to appeal.

   In re Dillet, L. R. 12 App. 459.

3. Lands held under registered title—Adverse possession of for twenty years—Extinction of registered title—Consolidated laws of 1887, c. 106, s. 30; c. 19, s. 5.

   Belize Estate and Produce Co. v. *Quilter*, L. R. (1897) A. C. 367; 66 L. J. P. C. 53.

4. Mortmain Act, 9 Geo. 2, c. 36—Non-applicability of to colony—Non-introduction of, into colony.

   Jex v. *McKinney*, L. R. 14 App. 77; 58 L. J. P. C. 67.

5. Partnership, law of—Dissolution—Accretion to partner's capital—Distribution of surplus assets—Lien.

   Binney v. *Mutrie*, L. R. 12 App. 160.

6. Territorial sovereignty—Adverse possession against Crown—Sixty years—Date of acquisition of territorial sovereignty by Crown.

   Attorney-General for British Honduras v. *Bristowe*, L. R. 6 App. 143; 50 L. J. P. C. 15.

INCUMBERED ESTATES COURT, WEST INDIES.

Lien of consignee of West Indian estate on *corpus* of estate—Difference between consignee and manager—No lien of manager for advances for cultivation—Manager appointed by trustee in possession—Manager appointed by Court of Chancery—Manager recognized by mortgagees—Appeal to Queen in Council under 17 & 18 Vict. c. 117, s. 65—Costs of appeal allowed and added to claim for principal and interest.

Fraser v. *Burgess*, 13 Moo. P. C. C. 314.

COMMISSIONERS OF COMPENSATION UNDER SLAVERY ABOLITION ACT.

Lessee of slaves—Compensation under Slavery Abolition Act—Covenant in lease to refer to arbitration in case of loss by abridgment of labour or diminution of returns of lessee in consequence of Act of Parliament or Regulation of Colonial Legislature—Non-contemplation of Slavery Abolition Act.

Gordon v. *Bruce*, 2 Moo. P. C. C. 261.

LEEWARD ISLANDS.

1. Advocates—Misconduct by—Power of colonial Courts to prevent from practising before them. (**Antigua.**)
   In re Justices of Court of Common Pleas at Antigua, 1 Knapp, 267.

2. Appeal—Lapse of time for asserting—Improper constitution of Court—Proceedings in equity, not at law—Special leave refused—Application under protest possible—Objection merely technical.
   Ex parte Kensington, 15 Moo. P. C. C. 209.

3. Bill of exceptions to direction of judge sealed by him—Case removed to Court of Error—Affidavit that allegation in the bill incorrect and that bill omitted to set out material points of evidence—Corroboration by judge—Bill to be taken off file to be amended by judge's notes—Not necessary in British West Indies to sue out writ to oblige judge to confess or deny his seal to bill of exceptions. (**Antigua.**)
   Pownall v. *Mascall*, 2 Knapp, 161.

4. Error—Writ of from Court of Common Pleas—Refusal of Court of Error to enter upon, on supposition they were not a properly constituted court—No appeal against such refusal to Queen in Council—Judgment from Court of Error necessary to give Judicial Committee jurisdiction. (**Antigua.**)
   In re Assignees of Manning, 3 Moo. P. C. C. 154. (See now *ante*, p. 196.)

5. Legislative Assembly—No power of punishing contempt, though committed in its presence and by one of its members—No authority in colonial House of Assembly analogous to *lex et consuetudo parliamenti*, inherent in the two Houses of Parliament in the United Kingdom, or to power of a Court of justice which is a Court of record—No judicial functions in colonial House of Assembly—*Kielley* v. *Carson* (4 Moo. P. C. C. 63) and *Fenton* v. *Hampton* (11 Moo. P. C. C. 347) approved—Warrant of committal by Speaker of colonial House of Legislature ought to show on its face that the contempt was committed in presence of House. (**Dominica.**)
   Doyle v. *Falconer*, L. R. 1 P. C. 328; 36 L. J. P. C. 33.

6. Piracy, goods taken by, not transferable to third party—Ship previously engaged in—Sale of by public auction—No restitution. (**Virgin Islands.**)
   Reg. v. *McCleverty*, 8 Moo. P. C. C., N. S., 43; L. R. 3 P. C. 673; 40 L. J. P. C. 48.

7. Ship—Purchase of American—Declaration by purchaser that he British subject—Provisional registry of ship as British—Ship seized and condemned for breach of Slave Trade Acts—Presumption of correctness of registry, flag, and pass of ship—Estoppel on owner—Liability of ship—2 & 3 Vict. c. 73—*Onus probandi*—Evidence—Pleading facts *noviter ad notitiam perventa*. (**Antigua.**)
   Dionissis v. *Reg.*, 3 Moo. P. C. C., N. S., 181.

8. Slave, domestic—Visit of to and temporary residence in England with mistress—Voluntary return to place of birth and servitude—Revival of servile condition on such return. (**Antigua.**)
   Slave Grace, The, 2 Hagg. Adm. R. 94.

LEEWARD ISLANDS—*continued.*

9. Will—Community of all property between the husband and wife, movable and immovable—Provision for dower and *preciput* or jointure—Power in case of children to accept or renounce community—Issue four children, two of whom died in the lifetime of their father, one without issue and the other having an only daughter to whom he bequeathed all his estate to be vested at twenty-five or marriage—Death of father shortly afterwards, having by a codicil directed that the property bequeathed by his will to his second deceased son should go to his granddaughter in the same way as directed by her father's will—Suit by two surviving children against granddaughter to ascertain respective rights in real and personal estate of father—Decree by consent declaring them and granddaughter entitled to one-third share each—Widow not party—Will by granddaughter at seventeen in favour of her guardians—Death shortly after—Suit by guardians to obtain possession of her third share of the personal estate of her grandfather—Resisted on ground that will obtained by undue influence, and she under twenty-five—Representatives of widow of grandfather made parties—Her interests at the time of taking the decree by consent as well as at her death ascertained—Decision in favour of plaintiffs on re-hearing reversed on ground that it was contrary to the policy of the law that a guardian should benefit by the will of his ward—Decree not sustained on grounds that former decree by consent was binding on all the parties in that suit; and that the right of the parties therein declared could not now be questioned—Reference to ascertain interest of widow at time of taking the decree.

Semble.—The Judicial Committee will not decide upon a testamentary instrument which appears not to have been admitted to probate, though registered in the island and not objected to in the court below. **(Dominica.)**

Moss v. *Leatham*, 2 Moo. P. C. C. 73.

WINDWARD ISLANDS.

Appeal, special leave to **(St. Lucia)**: *see* Practice.

Appeal, leave to appeal *in formâ pauperis* not of course **(St. Lucia)**: *see* Practice.

1. Bankruptcy, adjudication in, followed by certificate of discharge in England under bankrupt laws—Debt contracted in any part of world barred by—Authority of Insolvent Court at Barbados to inquire into frauds and offences committed against law of insolvent debtors in that island in proceeding previous to English adjudication—Insolvent again within jurisdiction—Island Act, No. 2341 of 1846—Imperial Statute, 12 & 13 Vict. c. 106, s. 200. **(Barbados.)**

Gill v. *Barron*, L. R. 2 P. C. 157; 37 L. J. P. C. 33.

2. Consignee of West Indian estates—Consignee and mortgagee—General lien of—Exclusion of by express conduct. **(Tobago.)**

Chambers v. *Davidson* (*In re Leith's Estate*), L. R. 1 P. C. 296; 4 Moo. P. C. C., N. S., 158; 36 L. J. P. C. 17.

WINDWARD ISLANDS—*continued.*

3. Consignee of West Indian estate—Devise of estate and plantation to executors in trust to manage and apply profits—Advances by consignee of estate—Misappropriation by executor—Disallowance of advances not applied to benefit estate—Power of executor to bind estate—No duty on consignee to see to application of advances—Rights of consignees of West Indian estates—Statute of Frauds must be pleaded. **(Barbados.)**
   Daniel v. *Trotman*, 1 Moo. P. C. C., N. S., 123.

4. Contempt of court—Innocent loan of newspaper containing scandalous matter respecting a Court not—Committing judge ordered to pay costs. **(St. Vincent.)**
   McLeod v. *St. Aubyn*, L. R. (1899) A. C. 549; 68 L. J. P. C. 137.

5. Costs of mortgage of property in West Indies—To be raised together with the mortgage money by a sale of the mortgage property, in case of non-payment by the respondents. **(Barbados.)**
   Henry v. *Byar*, 1 Knapp, 388.

6. Evidence—Entry of payment of money in books of Provost Marshal of St. Vincent by creditor indebted to the same parties upon several judgments—Not binding notice of general appropriation of amount against receipt previously taken expressing on what particular account. **(St. Vincent.)**
   Fraser v. *Birch*, 3 Knapp, 380.

7. Family name, property in—Old French law—Name in connection with trade or business—Fraud. **(St. Lucia.)**
   Du Boulay v. *Du Boulay*, L. R. 2 P. C. 430; 38 L. J. P. C. 35.

8. Fire insurance—Option of insurers to terminate policy on giving notice—Construction of condition—Practice—Costs.
   Sun Fire Office v. *Hart*, L. R. 14 App. 98; 58 L. J. P. C. 69.

9. Imperial law, extension of to colonies—Scotch Sequestration Act, 2 & 3 Vict. c. 41—Extension of, to the colonies—Act of Tobago Legislature declaring common law and statutes of England, so far as applicable, in force in the island—*Quære* whether Interpleader Act, 1 & 2 Will. 4, c. 58, extends to Tobago—If so, does appeal from judgment on feigned issue lie to Queen in Council? **(Tobago.)**
   Colonial Bank v. *Warden*, 5 Moo. P. C. C. 340.

10. Judge—Memorial by House of Assembly to Queen in Council complaining of illegal and oppressive conduct of—Lapse of time since acts charged except one, erroneous and improper, but in execution of duty—Refusal by Judicial Committee to advise removal of Chief Justice. **(Grenada.)**
   Representatives of the Island of Grenada v. *Sanderson*, 6 Moo. P. C. C. 38.

11. Judge—Power of Chief Justice of Supreme Court of Grenada alone and without consent of the Assistant Justices to issue rule altering practice of court—Rules of court by Chief Justice prohibiting Assistant Justices from doing any act in Chambers except in the absence from the island or illness of Chief Justice—Illegal, ordered to be rescinded. **(Grenada.)**
   In re Wells, 3 Moo. P. C. C. 216.

WINDWARD ISLANDS—*continued.*

12. Judge—Action for trespass and false imprisonment against persons exercising office of Judges of Royal Court of St. Lucia under commissions from the Governor irregularly issued. **(St. Lucia.)**
Gahan v. *Lafitte*, 3 Moo. P. C. C. 382.

13. Judge—Order in nature of a *mandamus* not issuable by Judicial Committee to the Judges of the Common Pleas of Tobago to enter up judgment after verdict, though such judgment ought to have been entered up as of course. **(Tobago.)**
In re Muir, 3 Moo. P. C. C. 150.

14. Mortgage of property in West Indies, covenant in to consign produce to mortgagee—Not usurious—Such mortgagee may charge commission on sale of the produce—Assignment by mortgagee in possession—Supplies and contingencies due before assignment—Payment of by assignee—Adding to mortgage debt and charging against mortgaged premises. **(St. Vincent.)**
Sayers v. *Whitfield*, 1 Knapp, 133.
But see *Leith* v. *Irving*, 1 My. & K. p. 292.

15. Mortgage, judgment on in 1827—Death of mortgagor—Sale of estate—Registration of judgment against B. and succession in 1830, not against purchaser of estate—Transfer of part of mortgage claim—Effect of claim—Effect of registration of judgment—Domicile *de facto* and *de jure*. **(St. Lucia.)**
Beaucé v. *Muter*, 5 Moo. P. C. C. 69.

16. Partnership—Contract by one partner believed to be entered into on behalf of whole firm—Supply of articles to fulfil—Disclaimer of contract by rest of firm—Liability of firm—Account current—No evidence of specific appropriation of sums accounted for as received. **(Grenada.)**
Smith v. *Ure*, 2 Knapp, 188.

17. Pleading—Action for slander—Innuendoes—Prefatory averment—Suspicion. **(Grenada.)**
Simmons v. *Mitchell*, L. R. 6 App. 156; 50 L. J. P. C. 11.

18. Principal and surety—Judicial sale of real estate to attorney for W. and wife resident in France—D. surety for payment of second instalment—Execution of deeds by trustee resident in colony—Ratification of sale by two trustees resident in England—Default in payment of second instalment—Action against D. as surety—Sale in fact to W. only—Ineffectual and void—Release of D. **(St. Lucia.)**
De Brettes v. *Goodman*, 9 Moo. P. C. C. 466.

19. Probate refused to paper professing to dispose of testator's real and personal property and subjecting them both to payment of his debts and funeral expenses, in testator's handwriting, sealed and signed by himself, but not attested, although attestation clause subjoined—Presumption against final intention that writing to be last will. **(St. Vincent.)**
Douglas v. *Smith*, 3 Knapp, 1.

WINDWARD ISLANDS—*continued.*

20. Registering deeds, &c., in St. Lucia—Ordinance for regulating form and manner of, art. 3—Registration of mortgage and assignment of part of estate charged and apportioned by previous act of liquidation—Right of party claiming under to come in *pari passu* with parties whose title registered under original act of liquidation—Ordinance passed in pursuance of Order in Council not altered or disapproved by Her Majesty in Council, though seemingly more extensive than contemplated by the Order, not void for excess, but considered as duly authorized by Order and taken in conjunction with it. **(St. Lucia.)**
Inglis v. *De Barnard*, 3 Moo. P. C. C. 425.

21. Slave trade abolition—Seizure and condemnation of Portuguese vessel under 2 & 3 Vict. c 73 affirmed on appeal by Judicial Committee—Proceedings in what form. **(Barbados.)**
Guimaraens v. *Preston*, 4 Moo. P. C. C. 167.

22. Vendor and purchaser—Agreement for payment of purchase-money of estate by yearly instalments with interest—Four last to be retained by purchaser as indemnity until good title made—Bill for specific performance—Vendor not entitled to compound interest—Not prepared to make good title—Decree of court below affirmed with costs, though varied in matter improperly made the subject of appeal. **(St. Vincent.)**
Stratton v. *Symon*, 2 Moo. P. C. C. 125.

23. Will—Specialty debt—Debtor appointed executor by creditor—Devise by debtor of real estates on trust for sale subject to debts—5 Geo. 2, c. 7, s. 4—Real estates in West Indies legal assets—Competency of testator to change legal distribution of assets. **(Barbados.)**
Turner v. *Cox*, 8 Moo. P. C. C. 288.

BARBADOS.

Water-supply Act of 1886, ss. 11, 23—Compensation—Past and future profits.
Trent-Stoughton v. *Barbados Water Supply Co.*, L. R. (1893) A. C. 502; 62 L. J. P. C. 123.

TRINIDAD.

1. Bill of sale—Growing crops—Registration—Ordinance No. 15 of 1884—Interpretation of s. 10—"Nothing contained in this Ordinance."
Tennant v. *Howatson*, L. R. 13 App. 489; 57 L. J. P. C. 110.

2. Cognovits—Practice as to—Ordinance No. 5 of 1845—Spanish laws of 1534 and 1560.
Colonial Bank v. *Cazabon*, 7 Moo. P. C. C. 412.

3. Governor—Plea to action of debt brought in the Court of First Instance in the Island of Trinidad that defendant was at the commencement

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of the action, and still was, Lieutenant-Governor of the island, and as such not liable to be sued—Overruled.

Semble.—Though judgment given against such Governor, his person not liable to be taken in execution while on service.

Hill v. *Bigge*, 3 Moo. P. C. C. 465.

4. Inheritance—*Status* of children born before marriage—Ordinance No. 24 of 1845, s. 5, and No. 7 of 1858, s. 7.

Escallier v. *Escallier*, L. R. 10 App. 312; 54 L. J. P. C. 1.

5. Mortgagee entitled to consignments and to furnish supplies to estate—Suit by against purchaser of estate for balance of account—Claim of heirs-at-law of vendor, original mortgagor, to preference in respect of purchase-money—Claim refused.

Brown v. *Anderson*, 2 Moo. P. C. C. 249.

6. Treasurer of Trinidad—No preferential claim against the estate of by Crown for moneys not forming part of the public revenue of the island, though received by him under order of Court of Audience from the Escribanos or Registrars of the courts.

Wildes v. *Attorney-General of Trinidad*, 3 Moo. P. C. C. 200.

TRINIDAD AND TOBAGO.

1. Accounts—Unauthorized entries—Disallowance of.

Bennicourt v. *Le Gendre*, L. R. (1900) A. C. 173; 69 L. J. P. C. 21.

2. Concession by Crown, deed of—Restrictive covenant affecting lands in possession of H.M.—Actual possession—Lands merely subject to control of Crown not included.

New Trinidad Lake Asphalte Co. v. *Attorney-General of Trinidad and Tobago*, L. R. (1904) A. C. 415; 73 L. J. P. C. 97.

3. Demurrer overruled—Merits not disposed of—Time allowed for trial not to be abridged so as to preclude fair hearing—Non-appearance of plaintiff—Defendant entitled to judgment dismissing action, but irregular for judge to take evidence and adjudicate thereon—Orders 28, r. 12; 36, r. 18; 57, r. 6.

Pollard v. *Harragin*, L. R. (1891) A. C. 450; 60 L. J. P. C. 63.

4. Ejectment by Crown—Equitable defence allowed—Concluded contract with Crown for issue of grant.

Attorney General for Trinidad and Tobago v. *Bourne*, L. R. (1895) A. C. 83.

5. Jurisdiction of magistrate—Title to lands—Appeal from magistrate exercising jurisdiction not possessed by him—Decision on appeal not pleadable as *res judicata*—Ordinances 4 of 1889 and 11 of 1891.

Attorney-General for Trinidad and Tobago v. *Ericke*, L. R. (1893) A. C. 518; 63 L. J. P. C. 6.

6. Lands adjacent—Lateral support—Escape of pitch—Injunction—Damages.

Trinidad Asphalte Co. v. *Ambard*, L. R. (1899) A. C. 594; 68 L. J. P. C. 114.

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7. Legal estate, purchase of for value with notice of equitable title in another person—Erroneous recitals in deed as to derivation of equitable title—No estoppel—Notice not vitiated.
Trinidad Asphalte Co. v. *Coryat*, L. R. (1896) A. C. 587: 65 L. J. P. C. 84.

BRITISH GUIANA. (Including cases from the old colonies, Demerara and Berbice.)

1. Administration—Suit for account of testator's estate—Error in mode of taking accounts—Interest.
Jerningham v. *Administrator-General of Demerara*, 15 Moo. P. C. C. 529.

2. Bankruptcy in England—Suit in colonial court at Demerara—Plaintiffs affected with notice of bankruptcy, but not having proved—Certificate of the bankruptcy—Discharge under.
Odwin v. *Forbes*, Buck, 57.

3. Bill of exchange—Drawn in one country, payable in another—Dishonour—Drawer liable according to *lex loci contractus*—Bill drawn generally—Drawer, acceptor, indorsers liable according to laws of countries where drawing, acceptance, and indorsement respectively take place—Principle of compensation in Civil Law adopted in Dutch Roman law applies to bills of exchange.
Allen v. *Kemble*, 6 Moo. P. C. C. 314.

4. Contempt of court—Publishing in journal comments on administration of justice—Imprisonment for six months—Liberty to judges of court to object to competency of appeal at hearing.
In re McDermott, L. R. 1 P. C. 260.

5. Contempt of court—Supreme Court of Civil Justice—Court of Record—Power to commit for contempt—Exercise of power discretionary—Not subject of appeal.
McDermott v. *Judges of British Guiana*, L. R. 2 P. C. 341: 38 L. J. P. C. 1.

6. Contract—Agreement made in Scotland for discharge of mortgage of lands in Demerara by bills payable in Scotland—Scotch contract—Interpretation according to law of Scotland.
Campbell v. *Dent*, 2 Moo. P. C. C. 292.

7. Creditors—Decree of *perpetuum silentium* against creditors of a person deceased who have not appeared and put in their claims under an edictal summons for that purpose—Not bar to action of creditor who has not so appeared against the executor of such a person.
Freyhaus v. *Heirs of Forbes*, 1 Knapp, 117.

8. *Crim. con.*, action of lies by Dutch law in British Guiana, and is recognized by Ordinances of Colony Nos. 19 & 29 of 1846.
Norton v. *Spooner*, 9 Moo. P. C. C. 103.

9. Donation—Deed of in favour of illegitimate children, minors—Acceptance by donor on donees' behalf—Sentence of willing condemned tion for performance of deed—Subsequent marriage of donor—

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Death of, leaving widow and issue—Death intestate and unmarried of one of illegitimate children—Claim by mother against donor's estate—Acceptance of donor on behalf of donees validating donation—Donation not revoked by subsequent marriage and birth of lawful children—Technical objections not taken in court below not entertained where mere matter of form not affecting substance of controversy.

Board of Orphans v. *Kraegelius*, 9 Moo. P. C. C. 438.

10. Executors—Colony governed by Dutch law—Executors taking no beneficial interest under will do not, by entering into possession or adiating property of testator, make themselves liable, as heirs do, to payment of all his debts—Paying for schooling and maintenance of illegitimate children of testator, making small advances to their mother, and parting with boat out of repair to holder of unpaid note of hand of testator originally given in payment for the boat, not sufficient dealings with estate to constitute an adiation.

Freyhaus v. *Cramer*, 1 Knapp, 107.

11. Executor, power of substituting—Construction of clause in will giving.

Farnum v. *Administrator-General of British Guiana*, L. R. 14 App. 651.

12. Foreign judgments—Decree of court below for money due on reversed—Judgments improperly obtained—Certificate of Deputy-Secretary in St. Vincent's that he had searched Secretary's office, and could find no warrant of attorney to confess judgment in an action, received as evidence of the non-existence of such a power, having been admitted as such in the court below—Bills drawn by one partner for a separate debt in the partnership name cannot be recovered upon as against the firm, unless the plaintiff can prove either a direct assent from the other partners or circumstances from which such assent might have been reasonably presumed.

Semble.—Objections cannot be made to a decree at the hearing before the Privy Council that have not been made in the court below.

Frankland v. *M'Gusty*, 1 Knapp, 274.

13. Governor of colony—Sovereign authority not delegated to—Act done by unauthorized by commission or instructions—Not equivalent to such act done by Crown—Invalidity of—Vendue Master of Berbice—Commission of 5 per cent. on sales in colony—No power in Governor to reduce.

Semble.—The non-objection on the part of the Crown to a notification or proclamation issued by a Governor of one of its ceded colonies does not imply that the Governor had authority in the subject of the proclamation; nor will its non-interference render the proclamation valid on the ground of acquiescence.

Cameron v. *Kyte*, 3 Knapp, 332.

14. Holland's currency—Claim in Demerara for sum of money—Holland's currency held to mean the currency of the colony, which called Holland's currency.

Hugenholtz v. *Watson*, 1 Knapp, 170. (See *post*, 18.)

15. Interdict against selling proceeds of plantation—Discharge of—Damages, rejection of claim for overruled by Judicial Committee.

McTurk v. *Bent*, 4 Moo. P. C. C. 213.

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16. Land, sale of—Servitude—Immovable property—Judicial Act—Roman Dutch law.
Steele v. *Thompson*, 13 Moo. P. C. C. 280.

17. Mortgage—Dutch law—Satisfaction of principal debt—Extinguishment of mortgage or pledge.
Wilkinson v. *Simpson*, 2 Moo. P. C. C. 275.

18. Mortgage of lands—Purchase of for smaller sum—Priority of purchasers to second mortgage—*Lex Anastasiana*—Holland's currency, meaning of—Clause for increasing interest.
Macrae v. *Goodman*, 5 Moo. P. C. C. 315. (See *ante*, 14.)

19. Plantation in colony, management of—Executrix and devisee in trust in England—"Without power of assumption, substitution, and surrogation"—Roman Dutch law—Appointment of attorney—English law.
Stuart v. *Norton*, 14 Moo. P. C. C. 17.

20. Practice—Order of Judicial Committee on petition for a mandament of substantial relief, *restitutio in integrum*, and *committimus* to Judge of Supreme Court of British Guiana.
In re Butts, 3 Moo. P. C. C. 441.

21. Practice—Execution sale—Claim declared preferential—Appeals—Pending appeals petition filed in British Guiana praying court to proceed to judgment of *præ et concurrentiæ* and to award the moneys to be paid *sub cautione de restituendo*—Refused—Application *ex parte* to Her Majesty in Council to reverse refusal, and for order upon Judges in British Guiana to entertain petitioner's application—Not granted.
In re Butts, 4 Moo. P. C. C. 92.

22. Practice—Mandament of penal interdict not granted to restrain execution of sentence on grounds that might have been brought forward at hearing of cause—In appeal against execution of sentence appellant cannot enter into merits—By such appeal justice of original sentence admitted.
Nieuwerkerk v. *Reynolds*, 1 Knapp, 151.

23. Promissory note—Joint action by holder of against maker and indorsee—Notice of dishonour to indorsee—Dutch Roman law.
Chapman v. *British Guiana Bank*, 6 Moo. P. C. C. 23.

24. Slaves—Hire of—Abatement in rent for allowed in respect of three manumitted under Slavery Abolition Act—Refused for loss from diminution in hours of work of apprenticed labourers—Counterclaim before Commissioners of Compensation.
Albouy v. *Retemeyer*, 3 Moo. P. C. C. 452.

25. Vendor and purchaser—Purchase-money of plantation secured by bills of exchange drawn on houses in England—Estate hypothecated as further security for purchase-money due on bills with interest and damages—Mortgage to be a first and preferent charge—Some of bills protested and returned to colony—Plantation sold under execution sale—Preferential claim of vendor for principal and interest due

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upon protested bills—Not for damages consequent thereon—Interlocutory order, referring matters of account to sworn accountant of Court of Civil Justice in Berbice with instructions thereon, not such a definitive sentence as by rules of Civil Law requires specific appeal; may be questioned on general appeal from final sentence of court.

Cameron v. *Fraser*, 4 Moo. P. C. C. 1.

26. Vendor and purchaser—Execution sale of real estate—Purchase—Inability to get transport from Supreme Court—No title—Annulment of execution sale—Return of purchase-money.

Forte v. *Beete*, 9 Moo. P. C. C. 336.

27. Will—Devise of property, real and personal, after death of testator's wife, to be sold, money arising therefrom to be immediately deposited in Bank of England, interest to be paid to testator's daughter during her life—Principal wholly at her disposal at her death—Daughter married woman—Husband's creditors not able in colony governed by Dutch law to take it in execution and sell it—Not incumbent on an heir to accept his legitim or *pars legitima* of inheritance for benefit of creditors.

Simpson v. *Forrester*, 1 Knapp, 231.

BERMUDA.

1. Provost-Marshal, right of to account of rents and profits of lands and other moneys received by Secretary of island.

Kennedy v. *Trott*, 6 Moo. P. C. C. 449.

2. Will—"Estate," meaning of—Realty as well as personalty, unless clear contrary intent expressed.

Mayor of Hamilton v. *Hodsdon*, 6 Moo. P. C. C. 76.

3. Writ *de vi laicâ removendâ*—Issue of from Common Law side of Court of Chancery in England disused—Same relief by injunction in case of obstruction to induction of party to benefice—Bermuda Act of 1814, s. 29—Jurisdiction of Court of Chancery of Islands to "examine, hear, judge, determine, and decree all matters, causes and things whatever, as fully and amply to all intents and purposes whatsoever as the High Court of Chancery in England may or can do"—Power to issue writ *de vi laicâ removendâ*.

Ex parte Jenkins, L. R. 2 P. C. 258; 38 L. J. P. C. 6.

4. Will—Evidence of execution—Retractation of evidence by one attesting witness—Incredibility—Explanation of absence of other attesting witness—Testator's capacity not disproved by mere eccentricity.

Pilkington v. *Gray*, L. R. (1899) A. C. 401; 68 L. J. P. C. 63.

BAHAMAS.

1. Contempt of court—Nature of the offence—Obstruction to administration of public justice—Power of Crown to remit sentence—Extends to sentences merely of punitive character for contempt of court—Power of Governor to exercise Royal prerogative in this respect.

In the matter of a Special Reference from the Bahama Islands, L. R. (1893) A. C. 138; 62 L. J. P. C. 79, nom. *In re Moseley*.

BAHAMAS—*continued.*

2. Foreign Enlistment Act, 59 Geo. 3, c. 69, s. 7—Violation of, how evidenced.
   Reg. v. *Carlin*, 6 Moo. P. C. C., N. S., 509; L. R. 3 P. C. 218; 39 L. J. P. C. 67.

3. Salvage—Never more than moiety—Derelict distinguished from salvage—Decree below of 76 per cent. reduced to 50 per cent.—Decree below carried into effect pending appeal on security being given to abide event of appeal.
   Gore v. *Bethel*, 12 Moo. P. C. C. 189.

EASTERN COLONIES.

HONG KONG.

1. Bankruptcy Ordinance, 1864, arts. 163, 165, 167, 168, 169—Fraudulent preference—Rights of trustees under art. 165.
   Benecke v. *Whittall*, L. R. 2 App. 602; 46 L. J. P. C. 81.

2. Bankruptcy in colony of firm—Power of attorney to petition court for adjudication—Act of bankruptcy—Assignment to trustee—Bankruptcy in London of partner—Consequent joint adjudication in colony against all partners—Competency of partner in London to dispute joint adjudication—Costs—Insufficiency among sets of respondents—Rateable distribution.
   Lyall v. *Jardine*, L. R. 3 P. C. 318; 39 L. J. P. C. 43.

3. Bill of exchange—Restrictive indorsement—Subsequent indorsee's right of action for benefit of restraining indorser or *cestui que trust.*
   Murrow v. *Stuart*, 8 Moo. P. C. C. 267.

4. Bill of lading—Indorsement of, forbearance or release of antecedent claim not good consideration for—Stoppage *in transitu*—*Transitus* till when—Words in deed capable of two constructions taken against party using them to work wrong—Position as to equities.
   Rodger v. *Comptoir d'Escompte de Paris*, L. R. 2 P. C. 393; 38 L. J. P. C. 30. Dissented from in *Leask* v. *Scott*, L. R. 2 Q. B. D. 376.

5. Bill of lading—"Or order or assigns," omission of—Indorsement—Title to goods.
   Henderson v. *Comptoir d'Escompte de Paris*, L. R. 5 P. C. 253; 42 L. J. P. C. 60.

6. Bill of lading—Secret trust—Assignment without notice—Consideration—Rights of assignee.
   Chartered Bank of India, Australia, and China v. *Henderson*, L. R. 5 P. C. 501.

7. Collision—Exceptional current—Liability—Evidence of negligence—Vessel under steam running down ship at her moorings in broad daylight.
   The City of Peking, L. R. 14 App. 40.

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8. Collision—Damages—Work of injured vessel done by substituted vessel of same owners at defendants' expense—Demurrage disallowed—Expenses of detention—Reference to Registrar of Her Majesty in Ecclesiastical and Maritime Appeals instead of to Registrar of court below.
The City of Peking, L. R. 15 App. 438; 59 L. J. P. C. 88.

9. Company—Articles of Association—Adoption of by long course of acquiescence—Irregular registration of unsigned articles of company incorporated under Ord. 1 of 1865—Amendment of and additions to by special resolutions—Validity of.
Ho Tung v. *Man On Insurance Co.*, L. R. (1902) A. C. 232; 71 L. J. P. C. 46.

10. Company—Shares—Calls paid by registered owner—Liability of beneficial owner to indemnify.
Hardoon v. *Belilios*, L. R. (1901) A. C. 118; 70 L. J. P. C. 9.

11. Contempt of court—Criminal offence—No person punishable for unless specific offence charged distinctly stated and opportunity given of answering—Barrister engaged in professional duty before Supreme Court, without notice of alleged contempt or rule to show cause, without being heard in defence, by order of court fined and adjudged to have been guilty of several contempts of court in disrespectfully addressing the Chief Justice while conducting a cause—Order, upon a reference by the Crown to Judicial Committee under the statute 3 & 4 Will. 4, c. 41, s. 4, set aside, and fine ordered to be remitted: first, on ground that the order was bad, inasmuch as the offences charged were not of themselves such contempts of court as legally constituted an offence; secondly, that even if they had been so, no distinct charge of the several alleged offences was stated, and no opportunity given to the party accused of being heard before passing sentence.
In re Pollard, L. R. 2 P. C. 106.

12. Extradition—Treaties of Nankin and Tientsin—Ordinance of Hong Kong, No. 2, 1850—"Crime or offence against the law of China"—Piracy—*Habeas corpus* Act, 31 Car. 2, c. 2, s. 6—Recommitting for same offence.*
Attorney-General of Hong Kong v. *Kwok-a-sing*, L. R. 5 P. C. 179; 42 L. J. P. C. 64.

13. Limitations Ordinance, No. 13 of 1864, s. 8—Forged will, probate of, void *ab initio* on revocation—Subsequent grant of letters of administration—Registrar of court, powers and duties of—Ordinances No. 8 of 1860, s. 39; No. 9 of 1870, s. 1.
Chan Kit San v. *Hotung Hang*, L. R. (1902) A. C. 257; 71 L. J. P. C. 49.

14. Partnership—Debt to—Agreement with member of partnership by third party to pay debt—Right of action by member of partnership in own name against third party.
Agacio v. *Forbes*, 14 Moo. P. C. C. 160.

* As to the definition of piracy in this case, *vide* Stephen's Hist. of the Criminal Law, ii. 27.

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Piracy: see *ante*, 12.

15. Reversing judgment, Order in Council, construction of—Repayment of amount of judgment—Interest—Restitution—Costs—Appeal from Hong Kong—General regulations of 1845—Practice—Printed cases dispensed with.
Rodger v. *Comptoir d'Escompte de Paris*, L. R. 3 P. C. 465; 40 L. J. P. C. 1.

16. Ship, title to—Jurisdiction of Vice-Admiralty Court—Non-registration of ship—Effect on subsequent *bonâ fide* purchaser—Master's authority—Sale of ship—Strong necessity—Cost of repairs—Delay of owner—Acquiescence in sale—Disobedience to monition to pay taxed costs of appellants—Sequestration of real and personal estate.
Lapraik v. *Burrows, The Australia*, 13 Moo. P. C. C. 132.

17. Shipping—Consignee of goods—Right to action against shipowner for non-delivery—Collision at sea—Damage to cargo—Duty of master—Ordinances constituting Supreme Court of Hong Kong—Practice and proceedings to be same as in courts in England—No Court of Appeal in colony—Appeal to England against final decree, judgment, or sentence, or rule or order in civil suit having final and definitive effect—Appeal from verdict of jury to England—Irregularity of—Proper course to move for new trial and appeal from refusal of—Fatal objection to right of appeal—Application to quash.
Tronson v. *Dent*, 8 Moo. P. C. C. 419.

PENANG.

1. Straits Settlements—Ordinance 8 of 1873, ss. 12 (sub-s. 2) and 26—Stamp—Insufficient cancellation—Additional stamp by way of penalty—Admissibility in evidence.
Vernon Allen v. *Meera Pullay*, L. R. 7 App. 172; 51 L. J. P. C. 50.

2. Will—Gift of residue to executors absolute or in trust—Uncertainty—Perpetuity—Law of England in Penang—Royal Charters, 1807, 1826, 1855—English Statutes in nature inapplicable to Penang—*Mayor of Lyons* v. *East India Co.*—Appeal to H.M.—Ordinance No. 5 of 1868—Present Supreme Court of Straits Settlements.
Yeap Cheah Neo v. *Ong Cheng Neo*, L. R. 6 P. C. 381.

STRAITS SETTLEMENTS.

1. Collision—One vessel navigated recklessly—Other vessel committing venial error but infringing unnecessarily regulation for preventing collisions at sea—Both held to blame.
Ocean Steamship Co. v. *Apcar, The Arratoon Apcar*, L. R. 15 App. 37; 59 L. J. P. C. 49.

2. Collisions at sea—Regulations for preventing, art. 18—Delay of few seconds.
Owner of SS. Kwang Tung v. *Owners of SS. Ngapoota*, L. R. (1897) A. C. 391; 66 L. J. P. C. 83.

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3. Crown, liability of in tort—Crown Suits Ordinance of 1876, s. 18, sub-s. 2—Right of access to sea.
   Attorney-General of Straits Settlements v. *Wemyss*, L. R. 13 App. 192; 57 L. J. P. C. 62.

4. Grant to A. and his heirs and successors—Assignment of by A.—Non-enurability beyond A.'s life.
   Chitty v. *Sultan Allie Iskander Shah*, L. R. 8 App. 751.

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Appeal *in formâ pauperis*; see Practice.

Appealable amount: see Practice.

1. Arbitration—Reference by court of, pending action—No right to withdraw from—*Ex parte* hearing by arbitrator—Award valid—Ordinance 2 of 1889 (Code of Civil Procedure), ss. 676, 677, 685, 691.
   Aitken Spence and Co. v. *Fernando*, L. R. (1903) A. C. 200; 72 L. J. P. C. 63.

2. Bottomry bond—Hypothecation of cargo—Duty of master—Communication with owners.
   Kleinwort and Co. v. *Cassa Marittima of Genoa*, L. R. 2 App. 156.

3. Charter of Justice (1833) cl. 23—District courts—Appeal from to Supreme Court by cl. 36—Power of Supreme Court by Ordinance No. 11 of 1843, s. 14, to review proceedings of Police Courts—Power to District Judge or Police Magistrate by s. 7 to enforce recognizance taken before Justice of Peace—Forfeiture by Police Magistrate of sureties' recognizances—Review by Supreme Court—Meaning of "forthwith" in notice to party out on bail to appear.
   Reg. v. *Price*, 8 Moo. P. C. C. 203.

4. Crown, right of subject to sue the—Right of set-off between the Crown and a subject—Roman-Dutch law in Ceylon.
   Hettihewage Siman Appu v. *Queen's Advocate*, L. R. 9 App. 571; 53 L. J. P. C. 72. See observations on this case in *Farnell* v. *Bowman*, L. R. 12 App. p. 650; 56 L. J. P. C. 72.

5. Decree absolute for default—Reasonable excuse for default—Procedure Code, c. 12, s. 87—Order of Master in Lunacy in England—Admissibility in evidence—Imperial Lunacy Act, 1890, s. 116.
   Harvey v. *Reg.* L. R. (1901) A. C. 601; 70 L. J. P. C. 107.

6. Divorce—Suit for—Special leave to appeal—Appealable amount—Importance of question at issue.
   Le Meunier v. *Le Meunier*, L. R. (1894) A. C. 283. See Practice.

7. Execution—Sale in of immovable property—Application by judgment debtor to set aside—Rule as to thirty days' limit—Absence of judgment debtor from Ceylon—Rule imperative—Ceylon Ordinance No. 4 of 1867, ss. 53, 54.
   Sillery v. *Harmanis*, L. R. 8 App. 99; 52 L. J. P. C. 7.

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8. Executor—Bond or mortgage by order of court of testator's real estate for expenses of cultivation—Fiscal sale on default in payment by mortgagor—Repudiation by co-executor and devisee in trust on allegation of collusion with purchaser and non-joinder of co-executor in mortgage—Supreme Court, court both of law and equity—Suit maintainable against executor or administrator in representative capacity for moneys advanced for purposes of estate he represents—Judgment and execution against testator's or intestate's estate—Effect of unauthorized dealings with estate by representative or person benefiting by and party to such breach of trust—Powers of executor by Roman-Dutch law in force in Ceylon—Over immovable as well as movable property.
Gavin v. *Hadden*, L. R. 3 P. C. 707.

9. Executor who has not proved—Sale in execution of judgment against not binding on deceased's estate—Will not proved by Order for probate without actual grant—Executor's acceptance of trusts not shown by application for probate—Letters of administration valid till revoked, even if irregularly granted.
Mohamidu Mohideen Hadjiar v. *Pitchey*, L. R. (1894) A. C. 437; 63 L. J. P. C. 90.

10. *Fidei commissum*—Law of not altered by Ordinances 21 of 1844, 10 of 1863, 7 of 1871—Will, construction of—*Jus accrescendi.*
Hamini v. *Tillekeratne*, L. R. (1897) A. C. 277; 66 L. J. P. C. 55.

11. Land—Adverse possession of—Acts of ownership—Ordinances No. 8 of 1834, No. 22 of 1871.
Clark v. *Elphinstone*, L. R. 6 App. 164; 50 L. J. P. C. 22.

12. Land—Fiscal sale of by mortgagee—Previous sale by mortgagor—Rights of purchaser from mortgagor.
Murugaser Marimuttu v. *De Soysa*, L. R. (1891) A. C. 69.

13. Land—Recovery of—English parties—Instruments in English form—Rights governed by English law—Roman-Dutch law in Ceylon—Deed affecting immovable property—Execution in Ceylon.
Lindsay v. *Oriental Bank Corporation at Colombo*, 13 Moo. P. C. C. 401.

14. Land registration Ordinance VIII. of 1863—Unregistered deed of ante-nuptial settlement—Postponed to subsequent registered mortgage bonds relating to settled estates jointly executed by husband and wife *bonâ fide* and for valuable consideration.
Gauder v. *Dassenaike*, L. R. (1897) A. C. 547; 66 L. J. P. C. 103.

15. Lien—Civil law—Movables—Possession not necessary—*Bonâ fide* purchaser without notice—Modification of rule by Roman-Dutch law—Goods not followed into hands of transferee without value—Inaccurate reference to Voet in Burge's Commentaries, iii. 572.
Tatham v. *Andree*, 1 Moo. P. C. C., N. S., 386.

16. Marriage, presumption of—*Onus probandi*—Roman-Dutch law.
Sastry Velaider Aronegary v. *Sembecutty Vaigalie*, L. R. 6 App. 364; 50 L. J. P. C. 28.

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17. Matrimonial law applicable to British or European residents—Roman-Dutch law existing in colony at date of Royal Proclamation, September 23, 1799—No jurisdiction conferred on local courts of divorce *a vinculo* over European spouses resident in island, but whose marriage and domicile in England—Permanent domicile within territory necessary to give courts jurisdiction to divorce *a vinculo* with ex-territorial effect, by general law of nations—So-called "matrimonial domicile" not recognized as creating such jurisdiction.
Le Mesurier v. *Le Mesurier*, L. R. (1895) A. C. 517; 64 L. J. P. C. 97.

18. Partition of intestate's estate or sale, suit for—Administrator not party—Suit dismissed—Civil Procedure Code, s. 547.
Ponamma v. *Arumogam*, L. R. (1905) A. C. 383; 74 L. J. P. C. 102.

19. Patent—Improvements in old machine—Infringement.
Brown v. *Jackson*, L. R. (1895) A. C. 446; 64 L. J. P. C. 180.

20. Practice—Carrying out judgment of Judicial Committee—Proceedings according to English law—Application of Roman-Dutch law—Law of procedure law of forum.
Lindsay v. *Duff*, 15 Moo. P. C. C. 452.

21. Probate, words or clauses omitted from—Revocation—Declaration of partial invalidity only of will—Only as compromise by consent.
Karunaratne v. *Ferdinandus*, L. R. (1902) A. C. 405; 71 L. J. P. C. 76.

22. Promissory note—Presentation, time for—Payable on demand—Payment not contemplated at any specific date—Continuing security.
Chartered Mercantile Bank of India, London, and China v. *Dickson*, L. R. 3 P. C. 574; 8 Moo. P. C. C., N. S., 1.

23. Sale—Conditions read at auction—Conditions appended to memorandum of purchase—Right to sue on latter—Damages—Wrongful retaking of goods sold—Rescission of contract.
Page v. *Eduljee*, 3 Moo. P. C. C., N. S., 499.

24. Shipping—Charter-party—Delivery of cargo over ship's side—Payment of freight on delivery.
Black v. *Rose*, 2 Moo. P. C. C., N. S., 277.

25. Will, execution of—Ordinance No. 7 of 1840—Notary present without attesting—Attestation by five witnesses valid—Testator of sound mind when giving instructions—At time of signature instrument so drawn accepted—Inability to follow provisions of—Sound mind at execution.
Perera v. *Perera*, L. R. (1901) A. C. 354; 70 L. J. P. C. 46.

26. Will—Mutual will—Construction of by Roman-Dutch law—Gift to class—Gift to husband and wife and another.
Dias v. *De Livera*, L. R. 5 App. 123; 49 L. J. P. C. 26.

MAURITIUS.

1. Alien—*Status* of resident in Mauritius determined by laws of England—Rights and liabilities incidental to such *status* determined by law of colony.

Code civile in Mauritius previous to surrender to British Crown, art. 13—Domicile of alien only obtained "*par l'autorisation du Gouvernement*"—Express formal authority of the Government, not merely tacit or permissive acquiescence, for residence of alien friend in Island.

Alien friend by order of Governor and Colonial Council deported and directed to quit Island within a month—Order consistent with law of France and strictly legal, notwithstanding party so deported had enjoyed privileges and exercised rights of person duly domiciled in Island.

In re Henry Adam, 1 Moo. P. C. C. 460.

2. Appeal, security for due prosecution of—Court below at Mauritius sole judge of sufficiency of—Refusal by that court to allow appeal on account of insufficiency of security tendered—Refusal supported by Privy Council.

Cambernon v. *Egroignard*, 1 Knapp, 251.

3. Bankruptcy, validity of adjudication of—Mauritius Ordinance No. 33 of 1853, ss. 40, 43, 50.

Oriental Bank Corporation v. *Richer*, L. R. 9 App. 413; 53 L. J. P. C. 62.

4. Bastard—*Code civile*, arts. 765, 766—*Des successions irrégulières*—Descendants, meaning of—*Postérité*—Claim of Government to property—General principles by which courts to be governed in construing *Code civile* as derived from decisions of *Cour de cassation* and leading French text-writers.

Her Majesty's Procureur- and Advocate-General v. *Bruneau*, L. R. 1 P. C. 169; 35 L. J. P C. 56.

5. Company—Insurance company—Registration in Supreme Court of Calcutta—Shareholder resident in Mauritius—New company to take business at expiration of limit of old company's time—Verbal authority to place name on deed—Liability on insolvency of company.

Certified copies of orders of Supreme Court of Calcutta—No proof of official seals or signatures—Admissibility in evidence—14 & 15 Vict. c. 99.

Leishmann v. *Cochrane*, 1 Moo. P. C. C., N. S., 315.

6. *Conseil de famille*—"*Contredits*" to *ordre* for distribution of sale price of estate—Mortgage of subsequent date—*Conseil de famille*, homologation of—*Code civile*, art. 458.

Chapman v. *Oriental Bank Corporation*, 2 Moo. P. C. C., N. S., 463.

7. Consular Court of Madagascar, powers of Judge of—Immunity of Judge from action for damage, though court not of record—Madagascar Order in Council, 1869.

Haggard v. *Pélicier*, L. R. (1892) A. C. 61; 61 L. J. P. C. 19.

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8. Contract made in one country to be performed in another country—Interpretation of—*Lex loci contractus*—Carrier—Special agreement—Indorsement on ticket.
Peninsular and Oriental Steam Navigation Co. v. *Shand*, 3 Moo. P. C. C., N. S., 272.

9. Divorce—Appeal from sentence of—Charter of Justice—Leave on special petition to Crown.
D'Orliac v. *D'Orliac*, 4 Moo. P. C. C. 374. (Cp. New South Wales 6, 30, 123.)

10. Matrimonial suits—Appeal in—None under Charter of Justice—Allowance of, on special petition—Practice in incompetent appeals.
Shire v. *Shire*, 5 Moo. P. C. C. 81.

11. *Faillite, ouverture de*—Refusal to pay, unless followed by cessation of payment, not sufficient to establish under art. 441 of *Code de commerce*—Suspension of payment not necessarily a cessation within terms of that article—General stoppage of payments—Carrying back *ouverture* to time of antecedent refusal.
House in Mauritius in co-partnership with one in London—Payments suspended in consequence of stoppage of the London house, though not till some time after arrival of intelligence of such stoppage—Date of *ouverture de la faillite* not carried back to failure of London house—Fixed from period of actual stoppage of payments in the island.
D'Epinay v. *Cockerell*, 1 Moo. P. C. C. 103.

12. Judgment, registered, specific charge on debtor's real estate with priority of date—Non-domiciled owner of real estate—Service of process on agent not authorized to accept or to elect acceptance of domicile for principals—Jurisdiction of court.
French Law as settled by *Code civile* in force in Mauritius.
Lang v. *Reid*, 12 Moo. P. C. C. 72.

13. Judgment creditors claiming under their debtor bound by his acts—Civil Procedure Code, art. 474—*Tierce opposition.*
Martin v. *Boulanger*, L. R. 8 App. 296; 52 L. J. P. C. 31.

14. Mortgage, second—Priority of advances.
Diore v. *Lachambre*, 37 L. T., N. S., 250.

15. Principal and agent—*Code civile*, art. 1384—Responsibility of *commettant* for negligence of *préposé*—Meaning of *préposé*—Liability for fire caused by working of labourers clearing land.
Sérandat v. *Saïsse*, L. R. 1 P. C. 152; 35 L. J. P. C. 17.

16. Sale by licitation—Privilege of *copartageants*—*Hypothèques*—Priority—*Code Napoléon.*
Courtaux v. *Hewetson*, L. R. 6 P. C. 407; 44 L. J. P. C. 86.

17. Sale by licitation of British ship—Registration of ship—Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 55, 58—Purchaser under judicial sale of beneficial interest in British ship—Not entitled to registration as owner—Discharge of mortgages, entries of.
Chasteauneuf v. *Capeyron*, L. R. 7 App. 127; 51 L. J. P. C. 37.

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18. Sale of movables—Delivery on credit—Default in payment—Recovery of by unpaid vendor—Increase in value in purchaser's possession—Suit of "*tierce opposition*" explained.
Rochecouste v. *Dupont*, 2 Moo. P. C. C., N. S., 195.

19. Unseaworthiness—Unexplained sinking—Presumption in absence of other evidence—Where other evidence given it must establish unseaworthiness affirmatively.
Ajum Goolam Hossen and Co. v. *Union Marine Insurance Co.*, L. R. (1901) A. C. 362; 70 L. J. P. C. 34.

20. Will made in *mystique* or secret form according to *Code civile*—Bequests to natural children—Subsequent legitimation of—*Quotité disponible*—Election.
Lagesse v. *Lagesse*, L. R. 4 P. C. 553; 42 L. J. P. C. 37, *nom. Lagesse* v. *Allard.*

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1. Collision at anchor—Colliding vessel, duty of—Vessel at anchor, duty of—*Onus probandi.*
"*Mary*" *Tug Co.* v. *British India Steam Navigation Co.*; *The Meanatchy*, L. R. (1897) A. C. 351; 66 L. J. P. C. 92.

2. Company registered in Victoria—Powers of directors to borrow and mortgage—Limitation—No restriction on company's borrowing powers—Ratification by company of acts of directors in excess of their authority—Ratification not extension of authority of directors for future.
Irvine v. *Union Bank of Australia*, L. R. 2 App. 366; 46 L. J. P. C. 87.

3. General average—Jettison—No right to contribution in wrongdoers whose acts lead to, or in those legally responsible for them—Innocent owners of jettisoned cargo—Rules as to rights and remedies resulting from proper case of jettison.
Strang, Steel and Co. v. *Scott and Co.*, L. R. 14 App. 601; 59 L. J. P. C. 1, *nom. Steel* v. *Scott & Co.*

4. Insurance, marine—"Open cover"—Application for policies to amount of cover held—Acceptance of subsisting proposal—Binding contract to issue policy in terms of open cover.
Bhugwandass v. *Netherlands India Sea and Fire Insurance Co. of Batavia*, L. R. 14 App. 83.

5. Insurance, marine—Policies for total loss on cargo and disbursements respectively—Shipwreck—No steps taken to save or discharge cargo—Ship dismantled—Notice of abandonment of cargo by captain to insurers—Ship and cargo sold by public auction—Large part of cargo afterwards saved—No total loss of cargo within policies—Total loss of disbursements payable out of freight affirmed.
Currie v. *Bombay Native Insurance Co.*, L. R. 3 P. C. 72; 39 L. J. P. C. 1.

CHANNEL ISLANDS.

JERSEY.

1. Appeal, special leave to—Improper concealment of material facts in petition for—Judge's notes of evidence when not to be laid before Court of Appeal.
   Baudains, Ex parte, L. R. 13 App. 832.

2. Bailiff cannot appoint third *dénonciateur* to Royal Court.
   Le Gallais v. *De Veulle*, 11 Moo. P. C. C. 72.

3. Bar of Royal Court—Limit of number of advocates to six—Right of nomination of advocate in Royal Court in bailiff.
   D'Allain v. *Le Breton*, 11 Moo. P. C. C. 64.

4. Bar of *Cour Royale*—Act of States opening—Confirmation by Queen in Council—Compensation to former advocates refused.
   The Jersey Bar, 13 Moo. P. C. C. 263.

5. Bill of exchange drawn in Jersey, payable in London three days after sight or order—Presentment thirty-seven days after date—Foreign bill—Reasonable time of presentment.
   Godfray v. *Coulman*, 13 Moo. P. C. C. 11.

6. *Clameur de haro*—Criminal as well as civil process—Attorney-General of Island necessary party in all stages—Appeal abated by death of respondent revived by making deceased's heir respondent.
   Ahier v. *Westaway*, 9 Moo. P. C. C. 395.

7. Clergyman—Jurisdiction of Ecclesiastical Court of Jersey to entertain suit against—Canons 17 and 46—"Scandal against morality and religion, and especially against the Established Church, of which he is a minister"—Criminal offence—Canon 21—Dean to ask advice and opinion of ministers present—Ministers only assessors, have no voice in the decision of the court—Appeal abated by death of Dean of Jersey pending appeal, revived in name of his successor, though not prosecuted within time required by 57th canon.
   Dean of Jersey v. *Rector of* ——, 3 Moo. P. C. C. 229.

8. Contract—Conflict of laws—Intention of parties as to law applicable—Fire policy—Award condition precedent to suit.
   Spurrier v. *La Cloche*, L. R. (1902) A. C. 446; 71 L. J. P. C. 101.

9. Contract for work between H and F—Transfer of by H to L—Assent of F—Bankruptcy of H—Right of L to payment of F—*Acte* of Royal Court calling in experts to view of work.
   Falle v. *Le Sueur*, 12 Moo. P. C. C. 501.

10. Court House—No power in Royal Court to order alterations directed by them to be paid for out of Crown Revenues.
    Attorney-General of Jersey v. *Le Capelain*, 4 Moo. P. C. C. 37.

11. Criminal cases—Special leave to appeal—Order in Council of May 13, 1572—Order of court directing defendant to plead—Definitive sentence.
    Esnouf v. *Attorney-General for Jersey*, L. R. 8 App. 304; 52 L. J. P. C. 26.

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12. Crown fiefs—Rents of—Liability of Prévôt for—No right to list of contributors from Crown—Documents not before court below—Production of at hearing.
Attorney-General and Receiver-General for Jersey v. *Le Moignan* L. R. (1892) A. C. 402; 61 L. J. P. C. 53.

13. *Curatelle*—Person—Property.
Ex parte Nicolle, L. R. 5 App. 346; 49 L. J. P. C. 51.

14. Custody of children—Provisional order giving it to mother pending separation suit—Appeal without prejudice to objection in Royal Court.
Belson v. *Belson*, 7 Moo. P. C. C. 30.

15. Debtor and creditor—Rate of exchange—Recovery of money received under specific authority, to be applied in particular manner—Rate at time and place specified where default in payment made, not at time judgment for recovery of sum recorded.
Bertram v. *Duhamel*, 2 Moo. P. C. C. 212.

16. Debtor and creditor—*Loi sur arrangements entre débiteurs et leurs créanciers*—Royal Court of Jersey—Leave—*Doléance.*
Crédit Foncier v. *Amy*; *Baily* v. *Amy*, L. R. 6 P. C. 146.

17. Defamation—Action for—Representation by defendants to plaintiff's employer in good faith in the course of their business—Damages.
Hamon v. *Falle*, L. R. 4 App. 247; 48 L. J. P. C. 45.

18. Delay—Petition and remonstrance in Royal Court for damages against illegal arrests and seizures by Attorney-General for alleged frauds against revenue laws—Joinder of Judges of court as defendants—Plea of incompetency of court—Declaration of incompetency by court—*Doléance* and petition to Queen in Council after two years' interval—Petition by Attorney-General to dismiss summons for him to appear—Summons discharged.
In re Whitfield, 5 Moo. P. C. C. 157.

19. *Droit de retrait*, principle of—Heir not bound to perform stipulations of original contract for personal services—Contract of mixed nature—Not enforceable against vendor's heir.
Touzel v. *Filleul*, 3 Moo. P. C. C. 484.

20. English common law of real property of no force in Jersey.
De Carteret v. *Baudains*, L. R. 11 App. 214; 55 L. J. P. C. 33.

21. Expectancy—Sale by expectant heir to brothers—No fraud or inadequacy of consideration—Lapse of year and day from opening of succession — Unconscionable bargains — Transaction impeachable within thirty years of sale, forty years of death of parents—Price less than one-half value—*Mandat* what—Oath to abide by contract before bailiff of Royal Court—Tacit reservation of just grounds of complaint—Trusts *inter vivos.*
Godfray v. *Godfray*, 3 Moo. P. C. C., N. S., 316; 35 L. J. P. C. 39.

22. Foreign judgment—Debtors' trustees, joining of as co-defendants not permissible—Practice—Interest on judgment—Costs.
Hawksford v. *Giffard*, L. R. 12 App. 122; 56 L. J. P. C. 10.

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23. *Habeas corpus*—Jurisdiction of Court of Chancery to issue writ in vacation—Sealing of writ—5 & 6 Vict. c. 103—Order in Chancery, 1842, No. 4—Duty of Royal Court at Jersey to register warrant of attachment for contempt of writ.
In re Belson, 7 Moo. P. C. C. 114.

24. Husband and wife—Judicial separation *quant aux biens*—Effect on husband's *droit de viduité*.
Lemprière v. *Vibert*, 15 Moo. P. C. C. 427.

25. Husband and wife—Relationship not dissolved by death of one of the parties without issue—Husband, whose wife died childless, incapable of acting as judge in case to which his nephew party.
Becquet v. *Lemprière*, 1 Knapp, 376.

26. Hypothec of movables—No possession—Registration—No priority over other creditors—Registration of debt affects only immovable property.
Hayley v. *Bartlett*, 14 Moo. P. C. C. 251.

27. Inheritance by law of Jersey—Collateral succession—Right of representative.
De Quetteville v. *Ramon*, L. R. (1893) A. C. 532; 63 L. J. P. C. 17.

Judge—Incompetency from relationship to party in case: see *ante*, 25.

28. Judge—Majority of jurats constituting court necessary to validity of judgment—Casting vote of bailiff.
Le Breton v. *Ennis*, 4 Moo. P. C. C. 323.

29. Land—Lords of fiefs in Island of Jersey not bound to discharge rents or incumbrances due on estates falling into their possession by decease of their tenants.
Pipon v. *Coutanche*, 1 Acton, 4.

30. Land—Norman law in Jersey—Fines on death of tenants holding lands within manors—Forfeitures on conviction of crimes—Corporation sole or aggregate becoming possessed of lands by conveyance from tenants—Indemnification of lord for loss of seignorial rights—Demise of Crown without issue—Proceedings against Lieutenant-Governor of Island to vacate possession of site of Government House, or pay lord indemnity for loss of dues—Lord entitled to indemnity.
Thornton v. *Robin*, 1 Moo. P. C. C. 439.

31. Legislation—*Acte* of States—Lodging *au greffe* for fourteen days before determination—Preamble of *Acte*.
In re States of Jersey, Re Gibaut, 11 Moo. P. C. C. 320.

32. Legislation—Power of Lieutenant-Governor to veto act of States—Unconstitutional exercise—Special interest of Crown.
In re States of Jersey, 15 Moo. P. C. C. 195.

33. Legislation—Three Orders of Queen in Council addressed to Lieutenant-Governor of Jersey, and directed by Home Secretary to be registered in Island to give them force of law—Recalled on petition by States of Jersey and numerous inhabitants—Acts passed by the States in substitution confirmed.

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Quære, whether Crown by prerogative can by Orders in Council, with concurrence of States of Jersey, originate laws for Jersey; or does exclusive right of originating laws reside in States?

In re States of Jersey, 9 Moo. P. C. C. 185.

34. Legitimation per *subsequens matrimonium*—Norman law—Evidence of paternity—Succession—Gift *inter vivos* of real estate disinheriting heir—Void by Jersey law.

La Cloche v. *La Cloche*, L. R. 4 P. C. 325; 41 L. J. P. C. 54.

35. Life insurance—Deposit in 1833 by A. domiciled in Jersey, with B. domiciled in England, of policy on A.'s life to secure debt—Transaction in England—No notice to insurance office—Subsequent delivery to A. of duplicate of policy on false representation of loss of original—Assignment of duplicate policy to A.'s wife, from whom A. had obtained *séparation de biens*—Notice to office—Payment of premium by A.'s wife till death of A.—In 1838 *cessio bonorum* by A.—B.'s debt not proved—Lien of B. on policy—Cause remitted to find facts as to nature of assignment to wife, with declaration that if evidence established title of A.'s wife, she had preferential title to B.; if otherwise, her title subsequent to B.'s charge on policy for debt and interest.

Le Feuvre v. *Sullivan*, 10 Moo. P. C. C. 1.

36. Low-water mark—Claim of lord of manor to exclusive right of cutting seaweed on rocks situate below—Only by grant from King or long and undisturbed enjoyment raising title by prescription.

The possession necessary to constitute a title by prescription must be uninterrupted and peaceable, both according to the law of England, the Civil law, and the laws of France, Normandy, and Jersey.

Benest v. *Pipon*, 1 Knapp, 60.

37. Mistake in law—Proceedings *ex parte* for frauds against the revenue laws of Jersey—Undefended from mistake of law—Cause remitted to court below, with liberty to defend.

Re George Whitfield, 2 Moo. P. C. C. 269.

38. Practice—Petition and *Doléance* against Act of the States of Jersey dismissed—Remedy in Island for any damage sustained in the execution of the Act.

Semble.—The Judicial Committee have no jurisdiction to determine matter litigated in inferior court except on appeal from decision of that court.

In re Gould, 2 Moo. P. C. C. 188.

39. Practice—Remonstrance or petition to court of ten members, praying that certain "*Acte*" or decree of that court might be annulled, or for such other relief as court might deem fit—Four members of opinion that remonstrance ought not to be received; three, that "*Acte*" in question ought to be modified; three, that "*Acte*" ought to be annulled—Reception of remonstrance.

Le Gros v. *Le Breton*, 2 Knapp, 181.

40. Practice of Royal Court in Jersey—Party reported by the viscount or sheriff to have repudiated succession in an Act *bénéfice d'inventaire*—Appeal by must be at time inventory is recorded.

Le Feuvre v. *Le Feuvre*, 2 Moo. P. C. C. 70.

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41. Principal and agent—Commission to sell and transfer stock "when the funds should be at 85 per cent. or above that price"—Agent bound to sell when the funds reach 85 per cent.
General rule in Privy Council not to condemn appellant to pay respondent's costs, where judgment of court below altered on appeal—Alteration obtainable in court below without appeal—General principle of judgment affirmed—Appellant ordered to pay respondent's costs.
Bertram v. *Godfrey*, 1 Knapp, 381.

42. Prison Board of Jersey—Order in Council, December 11, 1837—Liability for escape of prisoner for debt by gaoler's negligence.
Le Breton v. *Aubin*, 10 Moo. P. C. C. 17.

43. Public register of Jersey—Registration in by order of Royal Court—Effect of marriage contract—Hypothec.
Simon v. *Vernon*, L. R. 8 App. 542; 52 L. J. P. C. 79.

44. Rent—A covenant to pay a common rent as seigneurial binding, notwithstanding rent may have been before alienated from fief, and only repurchased by lord.
Lemprière v. *Le Brun*, 1 Acton, 7.

45. Repair of pavement of St. Helier—No power in Royal Court to appoint commissioners for, and raise cost by tax on inhabitants.
Le Gros v. *Le Breton*, 2 Knapp, 181.

46. Royal Court, constitution of—Prerogative of Crown to authorize new election on resignation of jurat—Power of Royal Court on death of jurat—*Actes* accepting resignation of two jurats—Petition to Crown against confirmation—Suspension of new elections—Reform of court.
In re Jersey Jurats, L. R. 1 P. C. 94.

47. Royal Court, jurisdiction of—Parish vote for application of parish funds—Suit to annul resolution—Laches of plaintiff—Too late.
Roberts v. *Ereaut*, L. R. (1905) A. C. 60; 74 L. J. P. C. 28.

48. Seigneurial lands—Alienation in mortmain of—Rights of seigneur—Indemnity.
Attorney-General and Receiver-General for Jersey v. *Turner, the Solicitor-General for Jersey*, L. R. (1893) A. C. 326; 62 L. J. P. C. 110.

49. Set-off—Liquid demand—Remand of case to ascertain fact.
Dyson v. *Godfrey*, L. R. 9 App. 726; 53 L. J. P. C. 94.

50. Settlement by wife's father—Rights of husband and wife in settled estate—Claim of husband's heir.
Broomer v. *Arthur*, L. R. (1898) A. C. 777; 67 L. J. P. C. 148.

51. Ship—Mortgage of for nominal sum to secure unascertained balance due to mortgagee—Power to sell by public auction, or to hold, enjoy, and possess as sole owner, until full amount of claim satisfied—Default in payment of sum named before real balance ascertained, and pending investigation thereof before arbitrators—Vessel sold by private contract—Sale wrongful, and not warranted by conditions

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of mortgage deed—Account of value of ship at time of sale—Amount paid to mortgagor.

Appeal *in formâ pauperis* allowed, the appellant by petition and affidavit alleging that he was not worth £5, besides wearing apparel, &c.

Brouard v. *Dumaresque*, 3 Moo. P. C. C. 457.

52. Tenure *d'haubert*—Crown not entitled to *primer seisin*, or *l'année de succession* upon death of lord of manor in Jersey.

Existence of feudal custom in one country, as England, affords no legal inference of its existence in another country, as Jersey.

Attorney-General v. *Symonds*, 1 Knapp, 390.

53. Trustee—Liability of to account to *cestui que trust* for profits—Possibility of incurring loss—Bankruptcy—Right of creditors to take whole estate of debtor with liabilities.

Williams v. *Stevens*, L. R. 1 P. C. 352; 36 L. J. P. C. 21.

54. Vendor and purchaser—Purchase within forty days of death of vendor set aside by heir, such purchases being void by the law of Jersey—No right in purchaser to repayment by heir of purchase-money—Only recoverable from persons to whom given by deceased vendor.

Semble.—Receiver of purchase-money ought to be made party to suit for recovery of property sold under such circumstances.

Marett v. *Jennes*, 1 Knapp, 103.

55. Way, right of—Creation of title to servitude—Dedication followed by user.

De Carteret v. *Baudains; Same* v. *Gautier*, L. R. 11 App. 214; 55 L. J. P. C. 33.

56. Wills—*Acte* of June 24, 1851, arts. 8, 10—Execution—Attestation—Date sufficiently set forth—Holograph.

Mauger v. *Le Gallais*, L. R. 1 P. C. 470; 36 L. J. P. C. 58.

57. Will—Testamentary power—Widow and child—Third of personal estate—Reduction *ad legitimum modum*—Title of executors to possession of testator's estate—Inventory—Citing heir—Heir's title to possession, how acquired—*Le mort saisit le vif*—Executors *procureurs légaux* of heir.

La Cloche v. *La Cloche*, L. R. 3 P. C. 125; 39 L. J. P. C. 25.

58. Will, validity of—Undue influence—Executors' evidence admissible.

Baudains v. *Richardson*, L. R. (1906) A. C. 169.

59. Will void—Codicil valid—Competency of witness to prove codicil, when incompetent to prove will.

Falle v. *Godfray*, L. R. 14 App. 70; 58 L. J. P. C. 61.

60. Witness, *inimitié* of—Admissibility of evidence—Erroneous practice founded on old Norman law, not altered by Judicial Committee—Objection to judge not witness by old Norman law.

Janvrin v. *De la Mare*, 14 Moo. P. C. C. 334.

GUERNSEY.

1. Aliens domiciled in Island—Deportation of—Advice of bailiff and jurats of Royal Court not necessary—Procedure in conference between bailiff and jurats and Governor or Lieutenant-Governor—Writ of

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pardon—Verification and registration in Royal Court not necessary—Refusal to discharge on production of writ of pardon—Obedience not to be enforced by Lieutenant-Governor by threat of military or other force.

In re Bailiff and Jurats of Royal Court of Guernsey, 5 Moo. P. C. C. 49.

2. *Contrôle de la Reine* of Royal Court, office of—Amalgamation with that of *Procureur de la Reine*—Cognizance of States—Revival of office—Abolition of such office by Order in Council with consent of States.

In re States of Guernsey, 14 Moo. P. C. C. 368.

3. Island of Herm—Dependency of Guernsey—Local taxation—Duty of one shilling per gallon on all spirituous liquors retailed and consumed in Guernsey—Produce to be applied in construction and repair of coast defences, harbours, roads, &c.—Prohibition of importation of spirits into the islands of Sark, Herm, and Jethou—Object to which the tax to be applied no ground of exemption of inhabitants of Herm.

Martyn v. *McCullock*, 1 Moo. P. C. C. 308.

4. Poor rate—Power of Royal Court to direct manner in which, and property upon which, to be levied—Rating inhabitants in respect of personal property situate out of Island.

Tupper v. *Treasurer of the Hospital of St. Peter Port*, 3 Knapp, 406.

5. Right of way, public's title to how made—Grant or prescription—Delay in suing after attaining majority no bar.

Godfray v. *Constables of Sark*, L. R. (1902) A. C. 534; 71 L. J. P. C. 116.

6. Telephone wires, illegal stretching of across public streets—Removal of—Powers of local authority.

National Telephone Co. v. *Constables of St. Peter Port*, L. R. (1900) A. C. 317; 69 L. J. P. C. 74.

ISLE OF MAN.

1. Commutation of Tithe Act, 1839—Lunatics Act, 1860—Rent-charge, rateability of.

Ingram v. *Drinkwater*, 44 L. J. P. C. 83.

2. Compensation—Right of action taken away.

Great Laxey Mining Co. v. *Clague*, L. R. 4 App. 115.

3. Customary estates of inheritance—Rights of Crown—Minerals—Clay and sand—Acts of settlement.

Attorney-General for Isle of Man v. *Mylchreest*, L. R. 4 App. 294; 48 L. J. P. C. 36.

4. Criminal conviction—Sentence founded on verdict of jury—Evidence for jury—Nothing to countervail—Special leave to appeal refused.

Ex parte Aldred, L. R. (1902) A. C. 81; 71 L. J. P. C. 27.

5. Deeds, execution of which had been obtained by imposition from an imbecile old man, set aside—A degree of weakness of mind far below what would be necessary to justify a commission of lunacy, if taken advantage of to procure the execution of a deed, will be sufficient ground for setting that deed aside.
When the Chancellor of the Isle of Man has referred a case to six members of the House of Keys, chosen by the parties, he is not bound by their decision, but may again refer the case to six members of his own selection.
Blachford v. *Christian*, 1 Knapp, 73.

6. *Donatio mortis causa*—Evidence—Burden of proof on donee—Why—Jurisdiction of Ecclesiastical Court.
Cosnahan v. *Grice*, 15 Moo. P. C. C. 215.

7. Dower—Common law of Isle of Man—Ordinance of 1687—Only *dum sola et casta vixerit*—Forfeiture by birth and affiliation of illegitimate child.
Cain v. *Cain*, 2 Moo. P. C. C. 222.

8. Equity of redemption of lands in Isle of Man barred by Act of Settlement, passed in Island 1703–4, after the lapse of twenty-one years from date of mortgage.
Christian v. *Goldie*, 2 Moo. P. C. C. 226.

9. Executor—Ecclesiastical law of Isle of Man—Liability for full amount of debts of deceased: first, if an executor *de son tort*; secondly, omitting to return inventory of assets to Episcopal registry; thirdly, if there be a fraudulent omission in inventory of any part of assets of deceased, of which he has taken possession.
Jackson v. *Wilson*, 3 Moo. P. C. C. 177.

10. Executor carrying on trade—Liability for trade debts—Rights of trade creditors becoming so after testator's death—Liability of executor of deceased shareholder in Joint Stock Banking Co. for company's debts contracted subsequently to testator's death—Manx law and English law same as to principles of partnership.
Labouchere v. *Tupper*, 11 Moo. P. C. C. 198.

11. Fraudulent appropriation—No evidence of—Conviction set aside—Bank director.
Nelson v. *Reg.* L. R. (1902) A. C. 250; 71 L. J. P. C. 55.

12. Insolvent debtor—Deed void against creditors of—Intack land—Quarter land—When liable to be attached for debt and sold—Debtor in prison—Mortgage in favour of creditors. See *post*, 20, 21.
Corlett v. *Radcliffe*, 14 Moo. P. C. C. 121.

13. Jury—Power of Court of Exchequer to summon—Information for intrusion and trespass by Attorney-General on behalf of Crown—Act of Tynwald, 1777—Non-user of jurisdiction of Crown for benefit of subject—Recognizance to answer costs of appeal by Attorney-General not necessary.
Attorney-General of Isle of Man v. *Cowley*, 12 Moo. P. C. C. 27.

14. Jury—Reversal of finding of—Misconduct of—User for twenty-one years—Prescriptive right—Admission of material but not legal evidence—Rejection of material legal evidence.
Cowin v. *Moore*, 14 Moo. P. C. C. 354.

15. Legitimation by subsequent marriage of parents—Customary law respecting female child entitled as purchaser under trusts of will—More than one child born before marriage—Lapse of more than two years.
Quane v. *Quane*, 8 Moo. P. C. C. 63.

16. Libel—Bishop's charge in Convocation—Privileged communication—Actual malice.
Laughton v. *Bishop of Sodor and Man*, L. R. 4 P. C. 495; 42 L. J. P. C. 11.

17. Manor of Isle of Man—Right of tenant to alienate—Manx Act of Settlement, February 4, 1703—Effect on Act of Tynwald, June 24, 1645—Non-avoidance of mortgage by mortgagee not coming in to be admitted—Distinction between Records and Court Rolls, s. 5 of Act of Settlement—Change of tenants—Death—Alienation—S. 11 of Act—Grant of customary land to two or more persons valid though only one admissible—Notes of bank—Security in nature of mortgage bond and security of customary freeholds—Failure of bank—Death of partners—Manx Bankruptcy Act of 1817—Negotiable note.
Boardman v. *Quayle*, 11 Moo. P. C. C. 223.

18. Manor, lord of—Tenants of—Mining rights—Water rights—Act of Tynwald, 1703.
Ballacorkish Mining Co. v. *Dumbell*, L. R. 5 P. C. 49; 43 L. J. P. C. 19.

19. Pleading—Averments of fraud—Proof—Finding of jury on question of fact only—Refusal to reverse.
Moore v. *Clucas*, 7 Moo. P. C. C. 352.

20. Quarter lands and Intack, tenure of, of nature of copyhold—Act of Isle of Man to amend law of mortgage, 1835—Abolition of foreclosure—Right of redemption—Sale. See *ante*, 12.
Birnie v. *Caystile*, 9 Moo. P. C. C. 303.

21. Quarter lands, tenure of—Power of wife to devise moiety of lands in purchased by husband—Devise to husband, effect of.
La Mothe v. *La Mothe*, 1 Knapp, 271.

22. Settlement of real estate—Construction of.
Cain v. *Teare*, 4 Moo. P. C. C. 249

23. Stone, right to dig for—Not lost by non-user for twenty-one years if stones, &c., for use of party obtaining them, or to be employed by him for improvement of his own or neighbour's estate—Supplemental Act of Settlement, June 6, 1704—Discretionary power in Governor to allow exercise of right.
Christian v. *Gibson*, 3 Moo. P. C. C. 351.

24. Trade, regulation of—Prohibition of goods prohibited in United Kingdom—Variation from time to time with prohibitions in United Kingdom—Repeal of prohibition of goods as to the United Kingdom—Repeal as to Isle of Man.
Burrow v. *Quirk*, 2 Knapp, 79.

25. Water, grant of use of—Absence of objection from grantor or claimant under him during fifty years—Prescriptive right of grantee—Damages for diversion by representative of grantor.
Tobin v. *Stowell*, 9 Moo. P. C. C. 71.

26. Will—Circumstances at date of—Trust—Expression of hope or confidence—Reversal of decree below without costs—Costs of mortgagees added to their security.
Quayle v. *Davidson*, 12 Moo. P. C. C. 268.

27. Will—Construction of—Die without leaving lawful issue.
Lewin v. *Killey*, L. R. 13 App. 783.

PRACTICE OF THE JUDICIAL COMMITTEE.

1. Absence from colony without representative in island when decree pronounced—Appeal allowed notwithstanding lapse of time. (**Newfoundland.**)
Henderson v. *Henderson*, 4 Moo. P. C. C. 259.

2. Amendment of rule *nisi* refused—Discretion of court. (**New South Wales.**)
Australian Steam Navigation Co., Owners of SS. Victoria v. *Smith and Sons, Owners of Keilawarra*, L. R. 14 App. 318.

3. Appeal against final judgment, decree or sentence of court, or rule or order having effect of final or definitive sentence—Regulations—Reservation to King in Council upon petition of any person aggrieved by any judgment or determination of court to appeal therefrom, upon such other terms and upon such other regulations and restrictions as to His Majesty should deem fit—No appeal except from a final judgment, decree or sentence, or rule or order having effect of a definitive sentence. (**Gibraltar.**)
In re Nahon and Pariente, 2 Knapp, 56. (See Jam. 22; Hg. Kg. 14; Jers. 36.)

4. Appeal, altering mode of—Proclamation of Governor, dated May 14—Alteration to take effect from 18th—Appeal noted on 2nd from judgment made on 1st—Petition to appeal presented on 15th—To be prosecuted according to previous practice.
Semble.—The Privy Council will not direct a greater security to be entered into by appellant on granting him leave to appeal, than practice to require in colony, although Governor's instructions empower him to require greater. (**Demerara.**)
Craig v. *Shand*, 1 Knapp, 253.

5. Appeal—Power by statute to H.M. to make rules for—No rules made—Refusal of court below to allow appeal—Appeal allowed by Judicial Committee on special petition. (**New South Wales.**)
Flint v. *Walker*, 5 Moo. P. C. C. 179; *Bank of Australasia* v. *Breillat*, 6 Moo. P. C. C. 152; *Marchioness of Bute* v. *Mason*, 7 Moo. P. C. C. 1.

6. Appeal allowed *ex parte*—Costs, security for respondent's—Increase—Length of transcript. (**Lower Canada.**)
Boswell v. *Kilborn*, 13 Moo. P. C. C. 476.

7. Appeal direct to Her Majesty in Council from Supreme Court—Order in Council, May 10, 1860—Refusal to allow appeal from order made before—Special leave.
Bunny v. *Judges of New Zealand*, 15 Moo. P. C. C. 164.

8. Appeal—Doubt if judgment below final—Importance of question in controversy—Prevention of further litigation—Special leave granted.
Salisbury Gold Mining Co. v. *Hathorn*, L. R. (1897) A. C. 268; 66 L. J. P. C. 62.

9. Appeal, leave to—Petition for—Canadian Act, 38 Vict. c. 11, s. 47—Prerogative—Small amount at issue—No general principle involved. **(Canada.)**
Johnston v. *Ministers, &c., of St. Andrew's Church, Montreal*, L. R. 3 App. 159.

10. Appeal, leave to refused because no power by Supreme Court—Leave granted by Judicial Committee to appeal against original decree and also against refusal of leave. **(Straits Settlements, Penang Division.)**
Neo v. *Neo*, L. R. 5 P. C. 89.

11. Appeal, leave to—Order of Supreme Court of Civil Justice of British Guiana committing publishers of local journal to prison for six months for alleged contempt of court in publishing in such journal comments on administration of justice by that court—Liberty to judges of court to object to competency of appeal at hearing. **(British Guiana.)**
In re McDermott, L. R. 1 P. C. 260.

12. Appeal from Supreme Court of Canada: see *post*, 22, 23, 24.

13. Appeal *in formâ pauperis*—Leave given. **(Jersey.)**
In re Lempriere, 11 Moo. P. C. C. 398. Cp. JERSEY, 51.

14. Appeal *in formâ pauperis*—Sureties for prosecuting dispensed with. **(Jersey.)**
Brouard v. *Dumaresq*, 6 Moo. P. C. C. 412.

15. Appeal *in formâ pauperis*—Costs, security for, dispensed with—Certificate of counsel. **(Isle of Man.)**
Kelly v. *Corlett*, 14 Moo. P. C. C. 89. See SIERRA LEONE, 8.

16. Appeal *in formâ pauperis*—Petition for leave not entertained when court below has power to grant and has not been applied to in due time.
Walker v. *Walker, Ex parte Walker*, L. R. (1903) A. C. 170; 72 L. J. P. C. 36.

17. Appeal *in formâ pauperis*—No provision for in colonial Code—Amount, value and nature of case adequate—Special leave granted. **(Ceylon.)**
Ponamma v. *Arumogam*, L. R. (1902) A. C. 561; 71 L. J. P. C. 121.

18. Appeal *in formâ pauperis*, special leave to—Leave to appeal granted by court below, but not *in formâ pauperis* for want of jurisdiction—Leave to appeal in both of two other suits because mixed up together—Stay of sale in execution, no jurisdiction in Judicial Committee to grant. **(St. Lucia.)**
Quinlan v. *Child, Ex parte Quinlan*, L. R. (1900) A. C. 496; 69 L. J. P. C. 85.

19. Appeal *in formâ pauperis*, leave to not of course—Order granting discharged where no substantial question in issue.
Quinlan v. *Quinlan*, L. R. (1901) A. C. 612; 70 L. J. P. C. 122.

20. Appeal *in formâ pauperis*, special leave to—English practice—Absence of certificate of independent counsel not ground for refusing—Certificate of counsel in court below accepted.
Mitchell v. *New Zealand Loan Co., Ex parte Mitchell*, L. R. (1904) A. C. 149; 73 L. J. P. C. 17.

21. Appeal, special leave to, on terms as to costs.
Canadian Pacific Railway v. *Roy*, L. R. (1902) A. C. 220; 71 L. J. P. C. 51.

22. Appeal, special leave—Principles on which granted—Supreme Court of Canada—Petition refused in case of dispute of fact as to sale or gift of goods worth £1000. (**Canada.**)
Prince v. *Gagnon*, L. R. 8 App. 103; *followed in Clergue* v. *Murray, Ex parte Clergue*, L. R. (1903) A. C. 521; *Canadian Pacific Railway Co.* v. *Blair*, L. R. (1904) A. C. 453; *Ewing* v. *Dominion Bank*, 74 L. J. P. C. 21.

23. Appeal, special leave—Principles on which granted—Supreme Court of Canada—Not when judgment plainly right or attended with little doubt.
La Cité de Montréal v. *Les Ecclésiastiques du Séminaire de St. Sulpice de Montréal*, L. R. 14 App. 660; 59 L. J. P. C. 20.

24. Appeal, special leave to, from Supreme Court of Canada—Petitioners appellants to Supreme Court—No important question of law—Refusal. (**Canada.**)
Ewing and Co. v. *Dominion Bank*, L. R. (1904) A. C. 806.

25. Appeal, special leave to, refused when issue of fact only involved—Essentials of petition for special leave.
Canada Central Railway Co. v. *Murray*, L. R. 8 App. 574.

26. Appeal, special leave to, granted *ex parte* from order of Supreme Court of Jamaica granting peremptory *mandamus*—Right to move on counter-petition to quash leave.
Hill v. *Reg.*, 8 Moo. P. C. C. 138.

27. Appeal, special leave to—Small amount at issue—Question chiefly of interest to petitioners—Terms—Petitioners to pay respondent's costs of appeal in any case if so directed at determination of appeal.
Montreal Gas Co. v. *Cadieux, Ex parte Montreal Gas Co.*, L. R. (1898) A. C. 718; 67 L. J. P. C. 115.

28. Appeal, special leave to—Abstract point of law—Refusal. (**Cape of Good Hope.**)
R. v. *Louw, Ex parte Attorney-General for Cape of Good Hope*, L. R. (1904) A. C. 412; 73 L. J. P. C. 65.

29. Appeal, special leave to—Special agreement to submit to court sanctioned by court below—Powers of court restricted and defined by agreement—Leave refused.
Attorney-General of Nova Scotia v. *Gregory*, L. R. 11 App. 229; 55 L. J. P. C. 40.

30. Appeal, special leave to—Grounds for granting.
In re Dillett, L. R. 12 App. 459; 55 L. J. P. C. 40.

31. Appeal, special leave to—Court's decision to be final, to be guided by equity and good conscience only, not to be bound by strict rules of law or equity or any legal forms—Crown's prerogative to grant special leave to appeal inapplicable to decision so authorized.
Moses v. *Parker, Ex parte Moses*, L. R. (1896) A. C. 245; 65 L. J. P. C. 18.

32. Appeal, special leave refused—Objection merely technical.
Ex parte Kensington, 15 Moo. P. C. C. 209. And see Cape of Good Hope, 29; Natal, 19; New South Wales, 123; Queensland, 2, 10; Victoria, 48, 50; Canada, 5, 6, 61; Jersey, 1.

33. Appeal, leave to, improperly obtained—Application to dismiss—Delay till hearing—No costs—Special circumstances—Fresh security. (**Canada.**)
Sauvageau v. *Gauthier*, L. R. 5 P. C. 494.

34. Appeal, time for—Year and day—Rule not imperative on King in Council—No right to complain in respondents. (**Lower Canada.**)
St. Louis v. *St. Louis*, 1 Moo. P. C. C. 143.

35. Appeal, time for—Discretion to admit—Awaiting decision on pending appeal—Costs—Further security—26 & 27 Vict. c. 24, s. 23. (**Sierra Leone.**)
Casanova v. *The Queen*, L. R. 1 P. C. 115; 3 Moo. P. C. C., N. S., 484.

36. Appeal, time for—Year after leave refused below—Action against D. as executor and as husband of sole heiress—Death of D.'s wife a few days before final sentence in court below, leaving him by her will joint heir with her children of her property and appointing the O. B. guardians of the children—Petition by D. and the O. B. to court below for leave to appeal—Refused the O. B., granted to D.—Right of O. B. to intervene after sentence for purpose of appealing, and to prosecute appeal although appeal of D. dismissed for want of prosecution—Appeal dismissed on account of neglect of guardians of infants—Right of infants on coming of age to revive.
Appellant not permitted to insist that judgment appealed against void for want of parties to suit in which made, objection not having been taken below—Accounts opened after final settlement acquiesced in for five years, if circumstances tending to show fraud in one of the accounting parties then discovered and he agrees to submit them to arbitration—Award invalid if one of parties to reference dies before it is made unless heirs of parties expressly named in submission to arbitration. (**Cape of Good Hope.**)
Orphan Board v. *Van Reenen*, 1 Knapp, 83.

37. Appeal, time for—No power in Judicial Committee to extend—5 Geo. 4, c. 113, s. 29. (**St. Lucia.**)
Muter v. *Chipchase*, 1 Moo. P. C. C. 1.

38. Appealable value, how determined—Canadian Act, 34 Geo. 3, c. 6, s. 30—To what extent interest of party affected by judgment—Leave to appeal granted by colonial court under colonial statute—Right of H.M. in Council to entertain petition to rescind. (**Lower Canada.**)
Macfarlane v. *Leclaire*, 15 Moo. P. C. C. 181.

39. Appealable value, how calculated—Special leave to appeal, when granted.
Allan v. *Pratt*, L. R. 13 App. 780; 57 L. J. P. C. 104.

40. Appealable value—Limitation by colonial Act of—Imperial Act—All laws by colonial Legislature valid—Colonial Court of Appeal to be subject to such appeal as before and to such other provisions as made by colonial Act—Petition for leave to appeal not entertained—Special saving in colonial Act of rights and prerogatives of crown. (**Lower Canada.**)
Cuvillier v. *Aylwin*, 2 Knapp, 72. Overruled by *Cushing* v. *Dupuy*, L. R. 5 App. 409; 49 L. J. P. C. 63.

41. Appealable value—Appeal to Governor and Council from Supreme Court—From Council to Her Majesty—No appeal from Supreme Court to Her Majesty—Advice to allow appeal to Governor and Council. (**Prince Edward Island.**)
In re Cambridge, 3 Moo. P. C. C. 175.

42. Appealable value—Adding costs. (**Canada.**)
Great Western Railway of Canada v. *Braid*, 1 Moo. P. C. C. N. S., 101.

43. Appealable value—Leave given to appeal though subject-matter of suit below.
Attorney-General of Jersey v. *Le Capelain*, 4 Moo. P. C. C. 37.

44. Appealable value—Amount below—Refusal of Governor and Council to hear counsel in support of the rule on merits of case or questions of law raised—Leave to appeal. (**Sierra Leone.**)
Patnelli v. *Heddle*, 8 Moo. P. C. C. 41. Cp. Vict. 65.

45. Appealable value £1000—Subject-matter £970—Leave to appeal from order refusing fourth new trial. (**Van Diemen's Land.**)
In re Sherwin, 4 Moo. P. C. C. 311.

46. Appealable value—Special leave—Validity of fiat of insolvency—Appealable grievance. (**Jamaica.**)
In re Abrahams, 2 Moo. P. C. C., N. S., 241.

47. Appealable value—Matter of public interest to large class in colony—Construction of Colonial Act—Appeal limited to. (**S. Australia.**)
Brown v. *McLaughan*, L. R. 3 P. C. 458.

48. Appealable value—Cases concerning titles to lands or tenements, annual rents, rights in future of parties. (**Canada.**)
Sauvageau v. *Gauthier*, L. R. 5 P. C. 494.

49. Appealable value—Leave to appeal granted from decrees directing children to be removed from mother's guardianship. (**Malta.**)
Camilleri v. *Fleri*, 5 Moo. P. C. C. 161.

50. Appealable value—Question of importance—Leave. (**Mauritius.**)
Peninsular and Oriental Steam Navigation Co. v. *Shand*, 3 Moo. P. C. C., N. S., 272.

51. Appealable value—Special petition for leave to appeal—Interest on judgment—Important questions of mercantile law—Action of similar nature—Continuing contract—Canadian Act, 34 Geo. 3, c. 6, s. 30; Judicature Act—Canadian Act, 12 Vict. c. 37—Substitution of Queen's Bench for Court of Appeals in Canada. (**Canada.**)
Boswell v. *Kilborn*, 12 Moo. P. C. C. 467.

52. Appealable value—Question of importance—Sum involved uncertain —Leave given—Security for respondent's costs to be lodged within three months of order giving leave. (**Jamaica.**)
Churchwardens of St. George, Jamaica, v. *May*, 12 Moo. P. C. C. 282. Cp. JAMAICA, 42.

53. Appealable value—Penalties for harbouring apprenticed labourers—Amount within sum specified in 47th & 48th Instructions of 1709 —Leave to appeal refused. (**Jamaica.**)
In re Harvey, 3 Moo. P. C. C. 148.

54. Appealable value—Rate for relief of poor—Assessments on ratepayers, separately and collectively, less than sum fixed. (**Guernsey.**)
NOTE.—Whenever the Royal Courts of Guernsey and Jersey refuse to grant permission to a party to appeal, and a petition for that purpose is presented to the King in Council, a letter is sent to them from the Council Office desiring them to state the reasons of their refusal, to which they return answers signed by the bailiffs. This practice does not extend to petitions for leave to appeal from the courts of any other of His Majesty's dominions.
In re Tupper, 2 Knapp, 201.

55. Appealable value, amount recovered under—Other actions on same transaction decided by same judgment—Leave granted—Observations as to prerogative of Crown to grant appeal to England notwithstanding colonial Act. (**Lower Canada.**)
In re Marois, 15 Moo. P. C. C. 189.

56. Appealable value—Amount under—Actions in nature of petition of right—Colonial Act, 28 Vict. No. 241—Judgments against Crown—Refusal of leave to appeal—Terms of Attorney-General in colony paying verdict and costs—Leave given on special petition to Judicial Committee without terms or security—Consolidation of appeals. (**Victoria.**)
In re Attorney-General of Victoria, L. R. 1 P. C. 147; 3 Moo. P. C. C., N. S., 527.

57. Appealable value £300—Documents sued for of no value—Special leave to appeal granted on allegation they exceeded £300 in value—Allegation shown unfounded in fact at hearing—Case stopped, appeal dismissed with costs. (**Barbados.**)
Wilson v. *Callender*, 9 Moo. P. C. C. 100.

58. Appealable value—Erroneous calculation—Leave to appeal obtained *ex parte*—Order discharged on petition. (**Lower Canada.**)
Quebec Fire Assurance Co. v. *Anderson*, 13 Moo. P. C. C. 477.

59. Appealable value—Too late to take objection at hearing—Motion to dismiss appeal—Proper course. (**Natal.**)
Aldridge v. *Cato*, L. R. 4 P. C. 313. See MALTA, 11.

60. Appealable value—How measured—Mesne profits. (**Ceylon.**)
Mohideen Hadjiar v. *Pitchey*, L. R. (1893) A. C. 193; 62 L. J. P. C. 96. And see NEW SOUTH WALES, 122.

61. Appeals—Consolidation of—Allowed at any stage if convenient.
Hiddingh v. *Denyssen*, L. R. 12 App. 107; 56 L. J. P. C. 107.

62. Bail in ecclesiastical and maritime cases—Given in colony—May be dispensed with in Privy Council in proper case—Privy Council Rules of 1865, No. 15.
Hunter v. *Hesketh*, L. R. (1891) A. C. 628; 61 L. J. P. C. 84.

63. Compromise of appeal on terms of paying compensation in respect of slaves subject of appeal—Appeal dismissed on petition, order made on Accountant-General of Court of Chancery to pay appellant the compensation money. (**British Guiana.**)
McTurk v. *Douglas*, 6 Moo. P. C. C. 500.

64. Costs—Security, amount of—Appeal allowed reducing—Divorce *a vinculo*. (**Mauritius.**)
Hulm v. *Hulm*, 4 Moo. P. C. C. 262. See MAURITIUS, 9.

65. Costs—Security for—Appeal from sentence of Lieutenant-Governor passed without hearing appellant—Execution delayed. (**Heligoland.**)
Siemens v. *Heirs of Bufe*, 11 Moo. P. C. C. 62.

66. Costs—Security for—Colonial Act, 15 Vict. c. 10—Bond not filed within three months—Revocation of leave by Supreme Court—Special leave on petition to Judicial Committee—Security for costs given in England—Liberty to apply to court in Victoria to cancel bond. (**Victoria.**)
Webster v. *Power*, L. R. 1 P. C. 150. See SIERRA LEONE, 8; NEW SOUTH WALES, 112, 118; NEW ZEALAND, 2.

67. Costs—Security for, to abide judgment—Appeal dismissed for want of prosecution under Rule 5 of Order of 1853—Correction of accidental error in order of court. (**New South Wales.**)
Milson v. *Carter*, L. R. (1893) A. C. 638; 62 L. J. P. C. 126.

68. Costs given to appellants—Points of law involved in appeals determined in two previous appeals against same respondents. (**Jamaica.**)
Nedham v. *Simpson*, 2 Knapp, 1. See NEW SOUTH WALES, 108; JERSEY, 41.

69. Costs in pauper appeals—Rule in House of Lords adopted by Judicial Committee.
Wasteneys v. *Wasteneys*, L. R. (1900) A. C. 446; 69 L. J. P. C. 83.

70. Counsel, number of entitled to be heard—Two distinct appeals against same respondent—Defence to each appeal in substance same. (**British Guiana.**)
In re Downie and Arrindell, 3 Moo. P. C. C. 414.

71. Criminal proceedings, appeal in—Inexpediency of entertaining—Authority of Crown to review decisions civil and criminal of colonial courts—Proceedings criminal in form, civil in substance—Important question of law and property—Conviction under Ordinance giving no appeal—Advice to H.M. to admit appeal. (**Falkland Islands.**)
Falkland Islands Co. v. *The Queen*, 1 Moo. P. C. C., N. S., 299.

72. Criminal proceeding, appeal in—Leave granted on *ex parte* application—Rescinded on special petition of the Attorney-General of the Island. (**Jersey.**)
In re Ames, 3 Moo. P. C. C. 409.

73. Criminal cases—Special leave to appeal—Order directing defendant to plead—Definitive sentence—Order in Council, May 13, 1572.
Esnouf v. *Attorney-General for Jersey*, L. R. 8 App. 304; 52 L. J. P. C. 26. And see NEW SOUTH WALES, 35, 38, 39.

74. Conviction of misdemeanour in Jamaica, appeal from—Pardon before hearing—Practice. (**Jamaica.**)
Levien v. *Reg.*, L. R. 1 P. C. 536; 36 L. J. P. C. 62.

75. Death of defendant—Revivor in name of official representative of estate. (**Jersey.**)
La Cloche v. *La Cloche*, L. R. 4 P. C. 325; 41 L. J. P. C. 54.

76. Delay of six years—Leave to prosecute appeal refused—Circumstances over which appellant had no control. (**Sierra Leone.**)
Lindo v. *The King*, 1 Moo. P. C. C. 3.

77. Delay—Decision in 1819—No step taken for two years previous to the application—Leave to appeal refused.
Semble.—Crown has no right greater than subject to be let in to appeal in general case in which its interests are concerned. (**Mauritius.**)
Laing v. *Ingham*, 3 Moo. P. C. C. 26.

78. Delay—Bar to appeal—5 Geo. 4, c. 113, s. 29; 3 & 4 Will. 4, c. 41—Incorporation of Acts. (**Sierra Leone.**)
Logan v. *Burslem*, 4 Moo. P. C. C. 284.

79. Delay—Vice-Admiralty Courts abroad, appeals from—Rules as to, s. 35—Ignorance of rule no ground to allow appeal—2 & 3 Vict. c. 51. (**St. Helena.**)
The Queen v. *Joze Alves Dias*, 6 Moo. P. C. C. 102.

80. Delay of eight years from judgment below—No explanation—Leave to appeal *in formâ pauperis* refused. (**Guernsey.**)
In re Sarchet, 10 Moo. P. C. C. 533. See NEW SOUTH WALES, 110.

81. Delay—Refusal of Royal Court to hear witnesses—3 & 4 Will. 4, c. 41, s. 7—Special examiner—Appeal to stand over. (**Jersey.**)
Falle v. *Le Sueur*, 12 Moo. P. C. C. 501. See JERSEY, 18.

82. Documents not before court below—Production of at hearing—Admissibility of reserved.
Attorney-General and Receiver-General for Jersey v. *Le Moignan* L. R. (1892) A. C. 402; 61 L. J. P. C. 53.

83. Evidence not tendered below—Reception of by Judicial Committee. (**Barbados.**)
Guimaraens v. *Preston*, 4 Moo. P. C. C. 167. See GIBRALTAR, 18.

84. Fact, concurrent findings of by court below—Question on appeal, what—Were judgments below clearly wrong? (**Lower Canada.**)
Allen v. *Quebec Warehouse Co.*, L. R. 12 App. 101; 56 L. J. P. C. 6.

85. Facts not submitted to court below—No appeal on ground they would have caused court below to make different order. (**Hong Kong.**)
Lyall v. *Jardine*, L. R. 3 P. C. 318; 39 L. J. P. C. 43.

86. Foreign appellant—Principle of *Logan* v. *Burslem*, 4 Moo. P. C. C. 284, enforced—Procedure law of the forum binding all. (**Sierra Leone.**)
Lopez v. *Burslem*, 4 Moo. P. C. C. 300. See 6 & 7 Vict. c. 38, partially repealed; see chap. vi.

87. Guardian—Appeal *in formâ pauperis* by—Special circumstances—Affidavit no solvent next friend of infant. (**Jersey.**)
Gaudin v. *Messervy*, 2 Moo. P. C. C., N. S., 372.

88. Interpretation of Code—Appeal to earlier law and decisions when justifiable.
Robinson v. *Canadian Pacific Railway Co.*, L. R. (1892) A. C. 481; 61 L. J. P. C. 79.

89. Judgments written after judgment delivered and sent to England for appeal—Condemnation of such course. (**Canada.**)
Brown v. *Gugy*, 2 Moo. P. C. C., N. S., 341.

90. Laches of respondent—Ejectment by appellant in Ceylon—Bill in Court of Chancery in England by respondent to establish sale of some lands—Omission to put real question in issue in District Court of Ceylon through fault of respondent—Decree of that court in appellant's favour—New trial granted by Supreme Court—Appeal to Judicial Committee dismissed on terms of respondent's consenting to dismissal of bill in England with costs and paying costs in court below—Otherwise order granting new trial reversed—Supreme Court of Ceylon to ascertain mesne profits. (**Ceylon.**)
Anstruther v. *Arabin*, 6 Moo. P. C. C. 286.

91. Libel—Appeal in action of—Privileged communication—Duty of judge—Duty of jury—Special leave—Proper course to apply for a new trial—Objection too late on hearing appeal—Execution stayed on terms. (**St. Helena.**)
Stace v. *Griffith*, L. R. 2 P. C. 420.

92. New issue as to negligence—Not to be raised in appeal after failure of proof of fraud.
Connecticut Fire Insurance Co. v. *Kavanagh*, L. R. (1892) A. C. 473; 61 L. J. P. C. 50.

93. Nonsuit—Error on—No nonsuit on wrong venue—Appeal from Assize Court direct to Queen in Council under 7 & 8 Vict. c. 69. (**Jamaica.**)
Hitchins v. *Hollingsworth*, 7 Moo. P. C. C. 228.

94. Objection not raised below not to be taken on appeal unless patent on face of proceedings. (**New South Wales.**)
Devine v. *Holloway*, 14 Moo. P. C. C. 290. See also *Frankland* v. *McGusty*, 1 Knapp, 274.

95. Originals—Transmission of on petition, to compare handwriting.
McCarthy v. *Judah*, 12 Moo. P. C. C. 47.

96. Prescription—Widow's right of action distinct from that of deceased husband—Civil Code, ss. 1056, 2262 (2)—Interpretation of Code—Appeal to earlier law and decisions when justifiable.
Robinson v. *Canadian Pacific Railway Co.*, L. R. (1892) A. C. 481; 61 L. J. P. C. 79.

97. Proxies—Rules and Regulations under 2 Will. 4, c. 5, s. 1, and Order in Council, June 27, 1832—Production of proxy—Burden of proof—Vice-Admiralty Courts. (**Malta.**)
The Euxine, L. R. 4 P. C. 8; 41 L. J. P. C. 40.

98. Record transmitted by court below alone looked at—Shorthand writer's notes not received to impeach judge's notes. (**Cape of Good Hope.**)
Stanford v. *Brunette*, 14 Moo. P. C. C. 60.

99. Reference, order of, to take accounts, &c., made pursuant to 3 & 4 Will 4, c. 41, s. 17, notwithstanding dissent of respondent's counsel to court referring same. (**Canada.**)
Hutchinson v. *Gillespie*, 4 Moo. P. C. C. 378.

100. Reference by Privy Council to court below as to part of their practice —Certificate not disputable unless petition praying for fresh reference presented, and supported by affidavits disputing the accuracy of certificate. (**Jersey.**)
Le Quesne v. *Nicolle*, 1 Knapp, 257.

101. Reversal, simple, of judgment of Queen's Bench in Canada—Transmission of Order in Council to Canada—Recorded by Queen's Bench —No order by Queen's Bench on court below—Addition to Order in Council of further direction that judgment of Superior Court (whence appeal originally came) be also reversed, verdict vacated, cause remitted to Superior Court, and *venire de novo* awarded. (**Canada.**)
Montreal Assurance Co. v. *McGillivray*, 13 Moo. P. C. C. 125.

102. Reversal of judgment—Construction of Order in Council.
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AND

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60. Bonds payable in South Africa of waterworks company in South Africa —Personal estate in South Africa—Shares of mining companies in South Africa transferable in London—Personal estate in United Kingdom.
Clark, In re, L. R. (1904) 1 Ch. 294.

61. Bottomry bond—Allowance under of master's wages paid on action abroad—*Onus* on owner to show amount improper.
Rajah of Cochin, Swab. 473.

62. Cession of British territory—Effect of on nationality of persons domiciled therein at time and continuing therein.
Doe v. *Acklam*, 2 B. & C. 779; 2 L. J. 129.

63. Cheque on Jersey bank—Presentment for payment—Custom of London bankers as to foreign cheques—Laches.
Heywood v. *Pickering*, L. R. 9 Q. B. 428; 43 L. J. Q. B. 145.

64. Civil servant—Consular agent in Niger Protectorate—Tenure of office —Power of dismissal at pleasure.
Dunn v. *Reg.*, L. R. (1896) 1 Q. B. 116; 65 L. J. Q. B. 279.

65. Claim to extensive territories in the colonies with titles of nobility and Royal prerogative—Challenge by the Crown—*Onus probandi*—Costs.
Alexander v. *Officers of State for Scotland*, L. R. 1 H. L. Sc. 276.

66. Colonial Acts in same terms as English Acts—Former to be read in sense affixed to English Acts by English tribunals.
Hunt v. *Fripp*, L. R. (1898) 1 Ch. 675; 67 L. J. Ch. 377.

67. Colony a place abroad—Judicial notice of—Geelong, Victoria.
Cooke v. *Wilson*, 1 C. B., N. S., 153; 26 L. J. C. P. 15.

68. Company—Australian proxies—Power of judge under Joint Stock Companies Arrangement Act, 1870, s. 2, to direct them to be telegraphed to Official Receiver to be used at meeting.
In re English, Scottish and Australian Bank, L. R. (1893) 2 Ch. 385.

69. Company—Incorporation of by colonial (Canadian) Act—Calls on shares in—Action for—Pleading—Never indebted—Simple contract debt.
Welland Railway Co. v. *Blake*, 6 H. & N. 410; 30 L. J. Ex. 161.

70. Company—Winding up petition—Affidavit verifying—Place of business—Service of petition—Order of November 1862, r. 4.
In re Fortune Copper Mining Co., L. R. 10 Eq. 390.

71. Company in England—Business in colony—Preference stock-holders—Payment of interest to in priority to other stockholders—Income tax imposed by colonial Act—Preference stockholders not domiciled in colony not affected by colonial Act.
Spiller v. *Turner*, L. R. (1897) 1 Ch. 111.

72. Company in England—Colonial agent of—Shareholder—Agreement for call money to be debited in agency account—Continued employment after liquidation—Salary in full—Set-off.
London and Colonial Co., In re; Ex parte Clark; L. R. 7 Eq. 550.

73. Company in England for carrying on banking business in the colonies especially in Australia—Shares issued with facilities for dealing therewith as negotiable securities or as money—No lien on for debt due from person to whom originally issued—Dismissal of bill in Sydney not conclusive against same plaintiff preferring bill in England on different allegations and equity—Delay, shares remaining in same name, no hindrance.
Hunter v. *Stewart*, 4 De G. F. & J. 168; 31 L. J. Ch. 346.

74. Company in New Zealand—Branch office, assets, and liabilities in England—Jurisdiction to wind up in England—Pending liquidation in colony—Companies Act, 1862, s. 199—Securing English assets till New Zealand liquidators take proceedings to make them available for English creditors *pari passu* with those in New Zealand.
In re Matheson Brothers, L. R. 27 Ch. D. 225.

75. Company in South Australia—Branch office, assets, and liabilities in England—Jurisdiction to wind up in England—Provisional liquidation in South Australia—Winding up in England to be ancillary to winding up in Australia—Limitation of powers of liquidator in England.
In re Commercial Bank of South Australia, L. R. 33 Ch. D. 174.

76. Company in colony—Name same as that of English company—Right of colonial company to trade in England under its colonial name.
Saunders v. *Sun Life Assurance Co. of Canada*, L. R. (1894) 1 Ch. 537.

77. Composition deed in New South Wales—Fraud in procuring execution of by creditors.
Dauglish v. *Tennant*, 8 B. & S. 1; L. R. 2 Q. B. 49; 36 L. J. Q. B. 10.

78. Contempt—Chancery Court of Isle of Man—Power to commit for—Commitment for time certain.
In re Crawford, 13 Q. B. 613; 18 L. J. Q. B. 225.

79. Contempt—House of Keys, Isle of Man—Power to commit for.
In re Brown, 5 B. & S. 280; 33 L. J. Q. B. 193.

80. Contempt—Royal Court of Jersey—Power to commit without warrant.
In re Wilson, 7 Q. B. 984; 14 L. J. Q. B. 201.

81. Contract made by foreigners in Guernsey—Spirits to be smuggled into England—Action on does not lie in England.
Biggs v. *Lawrence*, 3 T. R. 454; 1 R. R. 740.

82. Contract, rescission of—Grounds for—Misrepresentation in prospectus of company—Agent of New Zealand Government—*Bonâ fide* mistake

of as to his authority—Non-ratification by New Zealand Government of contract by—Right to reject shares in company.
Kennedy v. *Panama, &c., Mail Co.*, L. R. 2 Q. B. 580; 8 B. & S. 571; 36 L. J. Q. B. 260.

83. Convicts, assignments of—Power of Governors of New South Wales and Van Diemen's Land to revoke—Remission of sentences not necessary—9 Geo. 4, c. 83, s. 9.
Bryan v. *Arthur*, 11 A. & E. 108. *Vide post*, 116.

84. Copyright—Alien friend temporarily resident in British colony—Publication of work during residence—Not entitled to copyright by laws of the colony (Canada)—Entitled by English law—5 & 6 Vict. c. 45—Meaning of "author" in—Right of British Museum to copy.
Routledge v. *Low*, L. R. 3 H. L. 100; 37 L. J. Ch. 454.

85. Copyright—Work partly published in United States—Author going to reside in Canada—Publication of whole work in England during such residence before completion of work in United States—Cheap reprint from American edition—Divisibility of copyright—Injunction against publication of last part of work.
Low v. *Ward*, L. R. 6 Eq. 415; 37 L. J. Ch. 841.

86. Costs—Order of Judicial Committee of Privy Council to pay—Collateral proceeding—Original suit (in Canada) not determined—Action of debt for.
Hutchinson v. *Gillespie*, 11 Ex. 798; 25 L. J. Ex. 103.

87. Death, presumption of—Person emigrating to Australia—Not heard of for seven years—Proof of time, as distinguished from fact, of death.
In re Rhodes; Rhodes v. *Rhodes*, L. R. 36 Ch. D. 586; 56 L. J. Ch. 825.

88. Death, presumption of—Sailing from Demerara before expiration of the hurricane months—No information for seven years—Presumption of death at particular time.
Sillick v. *Booth*, 1 Y. & C. C. C. 117. See Administration, *ante*, 6, 25; Life insurance, *post*, 201.

89. Debt owing by residents in Mauritius—Bequest by testator resident at time of death in England of "all his estate and effects in Mauritius"—Testator not domiciled in Mauritius—Inclusion of debt in bequest.
Guthrie v. *Walrond*, L. R. 22 Ch. D. 573; 52 L. J. Ch. 165.

90. Discovery—Principal in New South Wales against agent in England—Production of documents by agent to person appointed by principal—Improper person—Striking out pleadings.
Dadswell v. *Jacobs*, L. R. 34 Ch. D. 278; 56 L. J. Ch. 233.

91. Discovery—Production of documents—Privilege—Communication between solicitor and client—"Evasion" of statutes.
Bullivant v. *Attorney-General for Victoria*, L. R. (1901) A. C. 196; 70 L. J. K. B. 645.

Divorce: see *post*, Marriage, and Judicial Separation.

92. Divorce Court, jurisdiction of—Colonies foreign countries for purposes of.
Firebrace v. *Firebrace*, L. R. 4 P. D. 63; 47 L. J. Div. 41.

93. Divorce—*Bonâ fide* residence of petitioner in England—Adultery of respondent in Australia.
Brodie v. *Brodie*, 2 Sw. & Tr. 259. This case is not regarded as good law now.

94. Divorce in Cape of Good Hope from marriage contracted in same colony—Subsequent marriage in same colony—Birth of *de quo* in Ireland—Residence for twenty years at Cape—Service in English regiment followed by service in Cape Mounted Rifles—Domcile—Validity of divorce.
Argent v. *Argent*, 4 S. & T. 52; 34 L. J. P. M. & A. 133.

95. Divorce—Jersey original domicile of marriage and matrimonial cohabitation—Desertion of wife by husband—Husband to United States—Acquisition by wife of *bonâ fide* domicile in England—Husband not amenable to English jurisdiction.
Le Sueur v. *Le Sueur*, L. R. 1 P. D. 139; 45 L. J. P. D. 73.

96. Divorce—Petition filed, not served—Commission to take evidence in Canada.
Vallentine v. *Vallentine*, L. R. (1901) P. 283. See *post*, Marriage.

97. Domicile—Native of Canada—Residence in France—Residence in England—Will—Residue—Advancement—Ademption.
Stevenson v. *Masson*, L. R. 17 Eq. 78; 43 L. J. Ch. 134.

98. Domicile of origin colonial (Malta)—Foreign domicile subsequently acquired in country whose laws do not recognize domicile—Distribution of movables by English court—Nationality—*Renvoi*.
In re Johnson; Roberts v. *Attorney-General*, L. R. (1903) 1 Ch. 821.

99. Domicile—Change of, how affected—Domicile of origin Scotch—Residence in India—Subsequent residence till death in Jersey.
Haldane v. *Eckford*, L. R. 8 Eq. 631.

100. Equity of redemption—Trust property Act of 1862, New South Wales (26 Vict. No. 12), s. 125—Legal estate not conferred on mortgagor.
Farmer and Co. v. *Inland Revenue Commissioners*, L. R. (1898) 2 Q. B. 141.

101. Error, plaintiff in—Felony—Personal attendance at argument—Plaintiff in Australia.
Murray v. *Reg.*, 3 D. & L. 100; 7 Q. B. 700.

102. Evidence—Accounts recorded in Court of Chancery (Jamaica) in suit against executors proving will in Jamaica—Suit against them in England—15 & 16 Vict. c. 86, s. 54.
Sleight v. *Lawson*, 3 Kay & J. 292; 26 L. J. Ch. 553.

103. Evidence—Commission to examine witnesses in Australia—Variance between judge's order and writ of commission—Admission of depositions.
Hodges v. *Cobb*, L. R. 2 Q. B. 652.

104. Evidence—Commission to examine witnesses in Newfoundland—Sufficiency of directions in judge's order—1 Will. 4, c. 22, s. 4—Sealed packet containing commission, return to it, examination of

witnesses signed by commissioner, left at Master's office by person unknown—Sufficiency of proof of return—Presumption of proper examination of witnesses.

Simms v. *Henderson*, 11 Q. B. 1015; 17 L. J. Q. B. 209.

105. Evidence—Commission to examine witnesses and party to suit in New Zealand—Appearance of party examined at trial if required by opponent—Names of witnesses not necessarily to be included in order—Ord. xxxvii. r. 5, 1883.

Nadin v. *Bassett*, L. R. 25 Ch. D. 21; 53 L. J. Ch. 253.

106. Evidence—Colonial Act, printed copy of, from Colonial Office—Discharge by Jamaica Court of Insolvency—Existence of such court.

Clarke v. *Emery*, 1 F. & F. 446. See 14 & 15 Vict. c. 99, ss. 7, 11.

107. Evidence—*Mandamus* to judge in colony to examine witness—Not granted where same end obtainable by commission—1 Will. 4, c. 22.

Farnworth v. *Hyde*, L. R. 2 C. P. 204; 14 C. B., N. S., 719.

108. Evidence—Refusal to allow plaintiff to take evidence of witness in Australia by affidavit—Appointment of examiner—15 & 16 Vict. c. 86, s. 36.

Crofts v. *Middleton*, 9 Hare, App. xvii., lxxv.

109. Evidence—Action on two judgments of Supreme Court of Jamaica—Copies of purporting to be signed by clerk of court and certified by him to be true copies—Certificate of notary public to clerk's identity—Certificate of Governor of island to same—Copies held admissible.

Appleton v. *Lord Braybrook*, 6 M. & S. 34.

110. Evidence—Judgment of Court of Common Pleas in Tobago—Chief Justice's handwriting—Seal of Island.

Buchanan v. *Rucker*, 9 East, 192.

111. Evidence—Letter of attorney inrolled in Office of Record in Jamaica—Deed so inrolled—Examined copies of—Admissibility.

Faulkner v. *Daniel*, 3 Hare, 221.

112. Exchange—Judgment in Jamaica for sum in Jamaica currency—Action in England to recover value of—Value held to be that sum in sterling which the currency would have produced at actual rate of exchange between Jamaica and England at date of judgment.

Scott v. *Bevan*, 2 B. & Ad. 78.

113. Executor—Suit against in Court of Chancery in Jamaica for account—Bill in English Court of Chancery against him by same plaintiff on same matter—Insufficient averment.

Foster v. *Vassall*, 3 Atk. 587.

114. Executors in the Mauritius—Death of testator in Mauritius—Residue left to testator's mother in England—Transmission of to England—Payment of to mother's executors—Claim by creditor of testator in England—Constitution of legal personal representative of testator in England—Party to suit.

Silver v. *Stein*, 21 L. J. Ch. 312.

115. Factors Act—Canada Code—Agent—Hypothecation by of property of real owner—Right of agent to pledge—Right of pledgee to set up title against real owner.

City Bank v. *Barrow*, L. R. 5 App. 664.

116. Felon—Remission of sentence by Governor of penal colony—Subsequently acquired property, protection in enjoyment of—5 Geo. 4, c. 84, s. 26.
Gough v. *Davies*, 2 Kay & J. 623; 25 L. J. Ch. 677. Cp. *Fleming* v. *Smith*, 12 Ir. C. L. R. 404. *Vide ante*, 83.

117. Felony—Conviction for of beneficiary under settlement—Clause in against alienation by beneficiaries—Assignment of share under settlement—Conditional pardon—Subsequent vesting of share under settlement—No forfeiture to Crown—Forfeiture for attempted alienation—6 Vict. c. 7—Van Diemen's Land.
Barnett v. *Blake*, 2 Drew. & Sm. 117; 31 L. J. Ch. 898, *nom. Blake* v. *Barnett*.

118. Felony—Forfeiture for under old law—Conviction in New South Wales—Vested but defeasible interest in personal estate—Minority of felon—Royal prerogative.
In re Bateman's Trust, L. R. 15 Eq. 355; 42 L. J. Ch. 553.

119. Fugitive offender—Arrest in Canada under 6 & 7 Vict. c. 34—Charge burglary—Bill for ignored—Arraignment on another charge.
Reg. v. *Phillips*, 1 F. & F. 105.

120. Governor—Action of libel by—Production of documents by—Privilege—State communications—Affidavit—Sufficiency—Ord. xxxi. rr. 12, 13, 14.
Hennessy v. *Wright*, L. R. 21 Q. B. D. 509.

121. Governor—Duty of in case of insurrection—Assent of to legislative enactment in own favour.
Phillips v. *Eyre*, 10 B. & S. 1004; L. R. 6 Q. B. 1; 40 L. J. Q. B. 28.

122. Governor—Right of to exercise authority of ordinary—No power in to commit non-accounting churchwarden.
Basham v. *Lumley*, 3 C. & P. 489.

123. Governor of colony—Right to bounties in respect of seizure of slaves—Absence from colony at time of seizure.
In re Seizure of Slaves at Sierra Leone, Br. & Lush. Adm. 148; 32 L. J. Adm. 189.

124. Governor of colony (Jamaica)—Misdemeanour—Jurisdiction of justices—"Next court of oyer and terminer"—11 & 12 Will. 3, c. 12; 42 Geo. 3, c. 85—11 & 12 Vict. c. 42, ss. 2, 17, 20, 25.
Reg. v. *Eyre*, L. R. 3 Q. B. 487; 9 B. & S. 329; 37 L. J. M. C. 159.

125. Governor of Gibraltar—Action against for assault and false imprisonment—Searching plaintiff's house for Spaniard—Evidence.
Glynn v. *Houston*, 2 M. & G. 337; 2 Sc. N. R. 548.

126. Governor of Minorca—Action against in England by native Minorquin for trespass and false imprisonment in Minorca.
Mostyn v. *Fabrigas*, 1 Cowp. 161.

127. Governor of New York—Action against for matter done by him as Governor—Trial at bar granted, "because King defended it."
Lord Bellamont's Case, 2 Salk. 625.

123. Government, colonial, not a corporation—Service of writ on impossible —Substituted service refused—Judicature Act, 1875, Ord. ix. r. 2.
Sloman v. *Governor and Government of New Zealand*, L. R. 1 C. P. D. 563.

129. *Habeas corpus*—Jurisdiction of Superior Courts at Westminster to issue to all parts of dominions of Crown—Canada.
Ex parte Anderson, 3 E. & B. 487; 30 L. J. Q. B. 129. But see now 25 Vict. c. 20.

130. *Habeas corpus*—Conviction of high treason in Upper Canada—Record of sentence of death—Pardon on condition of transportation to Van Diemen's Land for life—Legality of custody of keeper of gaol of Liverpool on way to Van Diemen's Land—Affidavit not necessary to support return—Amending return—False return—Attachment for.
Reg. v. *Wixon and others; The Canadian Prisoners*, 8 L. J. Q. B. 129; S. P. *Reg.* v. *Alves*, 8 L. J. Ex. 229.

131. *Habeas corpus*—Indictment for high treason in Upper Canada—Confession of guilt and petition for pardon under Act of Upper Canada—Pardon on condition of transportation to Van Diemen's Land for life—Legality of custody of keeper of gaol of Liverpool on way to Van Diemen's Land.
Ibid.

132. *Habeas corpus*—Isle of Man—Not a foreign dominion of the Crown—25 Vict. c. 20.
Quære.—Whether, in order to bring a colony or foreign dominion of the Crown within the Act, it must have a court capable of issuing the writ of *habeas corpus* itself, or whether any analogous process would be sufficient.
In re Brown, 5 B. & S. 280; 33 L. J. Q. B. 193; S. P. *Ex parte Crawford*, 13 Q. B. 613; 18 L. J. Q. B. 225.

133. *Habeas corpus*—Writ directed to viscount of Isle of Jersey—Power of Baron of Exchequer to issue returnable in Queen's Bench—Affidavits entitled in Court of Exchequer—Judge issuing writ not acquainted with all circumstances—1 & 2 Vict. c. 45.—*Vide ante*, 2.
In re Wilson, 7 Q. B. 984; 14 L. J. Q. B. 105.

134. *Habeas corpus*, return to—Committal by Royal Court of Jersey—Affidavits in answer, admissibility of—Contempt, power of court to commit for, without warrant.
In re Wilson, 7 Q. B. 984; 14 L. J. Q. B. 201.

135. *Habeas corpus*—Return alleging sentence of Royal Court of Jersey—Transportation—Removal to Millbank to carry sentence into effect —5 Geo. 4, c. 84, s. 17—Non-admissibility of affidavits in addition to return to court—Non-reception of discussion of law of Jersey on above return.
Reg. v. *Brenan*, 10 Q. B. 492; 16 L. J. Q. B. 289; and *vid. ante*, 2.

136. Husband and wife—Englishman married in England to Jersey woman —Liability for ante-nuptial debts of wife—Married Woman's Property Act, 37 & 38 Vict. c. 50, s. 2—*Lex loci contractus.*
De Greuchy v. *Wills*, L. R. 4 C. P. D. 362.

137. Income tax—Business carried on solely in Australia—Partner residing in England—Liability of to pay tax on share of profits not remitted to England—5 & 6 Vict. c. 35, ss. 100, 106, 108—16 & 17 Vict. c. 34, s. 2, sched. D.
Colquhoun v. *Brooks*, L. R. 14 App. 493.

138. Income tax—Company registered and incorporated in South Africa—Head office in South Africa—General meetings held in South Africa—Directors' meetings in England and in South Africa—Majority of directors always in England—Company's business in England and South Africa—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, sched. D—Company held to reside in and to exercise their trade in United Kingdom.
De Beers Consolidated Mines v. *Howe*, L. R. (1905) 2 K. B. 612.

139. Income tax—Interest from colonial (Australian) investments—Remittances not identified as capital charged with tax.
Scottish Provident Institution v. *Allan*, L. R. (1903) A. C. 129.

140. Income tax imposed by colonial legislature—Preference stockholders not domiciled in colony of English company carrying on business in colony—Not affected by colonial Act.
Spiller v. *Turner*, L. R. (1897) 1 Ch. 111.

141. Independence, declaration of by colony—Bond by B. to A., both inhabitants of colony—B. and A. attainted, property confiscated by legislature of colony—Fund provided for payment of B.'s debts—Action by A. on bond against B. in England maintainable.
Folliott v. *Ogden*, 1 H. Bl. 124, 135; S. C. *nom. Ogden* v. *Folliott*, 3 T. R. 726.

142. Infant domiciled in Australia—Devise of share of land in England to —Sale of by co-owners—Appointment of two persons domiciled in Australia as trustees of infant.
In re Simpson; In re Whitchurch, L. R. (1897) 1 Ch. 256.

143. Insolvency, certificate of, obtained in Newfoundland—Bar to action in England for debt contracted in England prior to insolvency—49 Geo. 3, c. 27, s. 8.
Philpotts v. *Reed*, 1 Brod. & B. 294; 9 Moo. 623.

144. Insolvency, colonial—Insolvent uncertificated—Suspension of discharge of for twelve months—Opportunity to colonial creditors to come in and prove debts—Condition that insolvent's future property shall be made available for creditors.
Ex parte Gibson, 34 L. J. Bkcy. 31.

145. Insolvency in New South Wales and surrender of estate—Life interest in fund in England—Forfeiture if life owner "should alien, sell, assign, encumber or transfer, or in any manner dispose of or anticipate"—Omission of life interest from insolvent's schedule—Acceptance of surrender—Sequestration of estate—Forfeiture of life interest.
Townsend v. *Early* (No. 2), 34 Beav. 23.

146. Insolvency in New South Wales—Settlement of real estate in England—Forfeiture of interest on bankruptcy, &c.—Meaning of "forfeited"—Bankruptcy Act, 1869, s. 74, re-enacted by 46 & 47 Vict. c. 52, s. 118.
In re Levy's Trusts, L. R. 30 Ch. D. 119.

147. Insolvency in New South Wales—Effect of on gift by will till bankruptcy or insolvency.
In re Aylwin's Trusts, L. R. 16 Eq. 585; 42 L. J. Ch. 745.

148. Insolvency in Queensland—Death of insolvent intestate in England—Share of insolvent of fund settled on marriage of father and mother in court—Payment of to official assignee.
In re Davidson's Settlement Trusts, L. R. 15 Eq. 383; 42 L. J. Ch. 347.

149. Insolvency in South Australia—Personalty in England—Right of assignees to fund, how to be enforced—Domicile of insolvent—South Australian Statute, 23 & 24 Vict. No. 16.
In re Blithman, L. R. 2 Eq. 23; 35 Beav. 219; 35 L. J. Ch. 255.

150. Insolvent law of Victoria, discharge under—Effect of on action on bill of exchange drawn and accepted in England, and for money lent, interest, and on accounts stated in England—Absence of allegation that either plaintiff or defendant domiciled in Victoria.
Bartley v. *Hodges*, 1 B. & S. 375; 30 L. J. Q. B. 352. See observations on in *Gibbs* v. *Société Industrielle*, &c., L. R. 25 Q. B. D. p. 407.

151. Insolvent law of Victoria, discharge under—Effect on action for debt—Defendant resident in Victoria—Plaintiff resident in England when debts contracted—Defendant resident in England at commencement of suit—Debts payable in England by virtue of contracts.
Gardiner v. *Houghton*, 2 B. & S. 743.

152. Insolvency in Victoria—Real estate in England—Non-vesting of in assignee—Will—Letters testimonial of Supreme Court of Victoria (Probate Jurisdiction) setting out—Acceptance of, as proof of will in Victoria of real estate in England.
Waite v. *Bingley*, L. R. 21 Ch. D. 674.

153. Insurance of deposits in bank in Australia—Suretyship or insurance?—Scheme of arrangement between bank and creditors under provisions of colonial statute—Effect of on contract—Subrogation to rights of depositor under arrangement.
Dane v. *Mortgage Insurance Co.*, L. R. (1894) Q. B. 54.

154. Insurance, marine—At and from L. to ports in any order backwards and forwards on West Coast of Africa—To commence at and from landing—Outward cargo to be considered homeward interest twenty-four hours after arrival—Loss of goods shipped at L. more than twenty-four hours after arrival on coast of Africa—Alteration of policy.
Joyce v. *Realm Marine Insurance Co.*, L. R. 7 Q. B. 580; 41 L. J. Q. B. 356.

155. Insurance, marine—Valued policy—Barter voyage to West Coast of Africa—"Outward cargo homeward interest twenty-four hours after arrival at first port or place of trade"—Liberty to extend valuation of homeward cargo—Landing of portion of cargo at first port—Departure without receiving other goods after more than twenty-four hours—Recovery of value of goods actually on board.
Tobin v. *Harford*, 17 C. B., N. S., 528; 34 L. J. C. P. 37.

156. Insurance, marine—Valued policy on freight from Calcutta to Mauritius—Passage money of coolies not included—Amount recoverable how calculated.
Denoon v. *Home and Colonial Assurance Co.*, L. R. 7 C P. 341.

157. Insurance, marine—Voyage from Swan River to Mauritius—Anchoring in port of Mauritius—Usage as to—Question for jury whether ship arrived.
Lindsay v. *Janson*, 4 H. & N. 699; 28 L. J. Ex. 315.

158. Insurance—Fire policy—Marine policy at and from River Hunter to Sydney, thence to London, including risk of transhipment or landing and reshipment at Sydney—Fire in stevedore's stores at Sydney—Who liable.
Australian Agricultural Co. v. *Saunders*, L. R. 10 C. P. 668; 44 L. J. C. P. 391.

159. Isle of Man—Not within the United Kingdom.
Davison v. *Farmer*, 6 Ex. 242; 20 L. J. Ex. 177.

160. Jersey—Debtor resident in—Statute of Limitations.
Flood v. *Patterson*, 29 Beav. 295; 30 L. J. Ch. 486. *Vide* now 19 & 20 Vict. c. 97, s. 12.

161. Judge of Crown colony—Pension of—Vesting of in trustee on bankruptcy—Apportionment of between pensioner and creditors—32 & 33 Vict. c. 71, ss. 4, 15, 17, 88-90.
Ex parte Huggins, L. R. 21 Ch. D. 85.

162. Judgment of Court of Antigua—Conclusiveness of—Action in England on—Discovery and commission to examine witnesses abroad in aid of defence—Refusal of.
Martin v. *Nicolls*, 3 Sim. 458.

163. Judgment in Supreme Court of Jamaica—Action on—Ground of need not be shown.
Walker v. *Witter*, 1 Dougl. 1.

164. Judgment of Supreme Court of Jamaica—Held binding in England.
Galbraith v. *Neville*, 1 Dougl. 6, note.

165. Judgment by default in Supreme Court of Jamaica—Action on—Statement in judgment that defendant appeared by attorney—Proof of attorney's authority not necessary.
Molony v. *Gibbons*, 2 Campb. 502.

166. Judgment of Court of St. Vincent—Declaration in debt on—Statement that court had jurisdiction—No need for.
Robertson v. *Struth*, 5 Q. B. 941; D. & M. 773.

167. Judgment in King's Bench at Quebec—Execution stayed—Effect of in action on account stated and on the judgment—Evidence of debt—Distinction between judgments in foreign and home courts.
Hall v. *Odber*, 11 East, 118.

168. Judgment of colonial court (Victoria)—Plea of *nul tiel record*—Bad as amounting to traverse of immaterial allegation.
Philpott v. *Adams*, 7 H. & N. 888; 31 L. J. Ex. 421. S. P. *Chapman* v. *Sherrie*, 5 Ir. C. L. R. 36.

169. Decree of colonial court (Newfoundland) for payment of balance due on a partnership account—Action for debt upon—Held maintainable.
Henley v. *Soper*, 8 B. & C. 16; 2 M. & R. 153.

170. Decree of Supreme Court of Newfoundland—Defendant out of jurisdiction—Authority of attorney made on defendant's departure—Sufficiency of to support decree—Pleading.

Simms v. *Henderson* ; *Henderson* v. *Henderson*, 11 Q. B. 1015; 17 L. J. Q. B. 209.

171. Decree on equity side of Supreme Court of Newfoundland established by 5 Geo. 4, c. 67—Action of debt on held maintainable—Anything constituting defence in the colonial court to be relied on there—Presumption that right done.

Henderson v. *Henderson*, 6 Q. B. 288 ; 13 L. J. Q. B. 274.

172. Decree in Equity of Supreme Court of Newfoundland—No injunction against execution of in Court of Chancery in England—Appeal to Privy Council appropriate.

Henderson v. *Henderson*, 3 Hare, 100.

173. Decree in England to redeem West India estate—Bill to foreclose by mortgagees in Court of Jamaica—All parties in England—Injunction to restrain proceedings in the colonial court.

Beckford v. *Kemble*, 1 Sim. & S. 7.

174. Decree in Court of Chancery of Island of Grenada against late partners for partnership debts—Payment by plaintiff—Conclusiveness against defendant in action on covenant to indemnify plaintiff against debts due from late partnership of plaintiff, defendant, and another.

Tarleton v. *Tarleton*, 4 M. & S. 20.

175. Judgment of court of Gold Coast colony—Insolvency of plaintiff under Act of colony by reason of judgment—Assignee in England—Collusion between him and judgment creditor—Prayer for assignee to be decreed to prosecute appeal, or plaintiff enabled to prosecute appeal in assignee's name—Insufficient averment of failure to obtain justice in the colonial courts.

Smith v. *Moffatt*, L. R. 1 Eq. 397 ; 35 L. J. Ch. 19.

176. Judgment of Court of Mauritius—Law of the colony as to suits against absent party—Process to be served on King's Attorney-General in colony—No express provision that Attorney-General should communicate with party—Judgment against party resident within jurisdiction of court at time cause of action accrued—Withdrawal of party before proceedings commenced—Allegation that judgment contrary to law of country where given—Proof of.

Becquet v. *McCarthy*, 2 B. & Ad. 951.

177. Judgment in island of St. Christopher for defendant in action for same causes—Non-appearance on record that judgment final and conclusive in colony itself—Plea bad for.

Plummer v. *Woodburne*, 4 B. & C. 625 ; 7 D. & R. 25.

178. Judgment in Admiralty Court of Sierra Leone against defendant then being within the jurisdiction of that court—Subsequent action in England for same cause against same defendant—Previous judgment no defence.

Smith v. *Nicolls*, 5 Bing. N. C. 208 ; 7 Sc. 147.

179. Judgment by default in colony (Tobago)—Defendant summoned by nailing up a copy of declaration at the court-house door—Not shown defendant ever in colony, or subject to jurisdiction of colonial court when suit commenced or afterwards—Law of colony.

Buchanan v. *Rucker*, 9 East, 192.

180. Judgment of Supreme Court at Sydney, New South Wales—Non-conclusiveness of in bill by same plaintiff in England in which allegations and equity different—Delay of plaintiff—Banking company in England to carry on business in colonies, especially Australia—"Colonial shares"—English shares transferable in colony or England—Transferee of shares—Lien of company for debt of original holder.
Hunter v. *Stewart*, 31 L. J. Ch. 346; 4 De G. F. & J. 168.

181. Judgment at Cape of Good Hope—Action on—Cape Ordinance as to insolvency—Sequestration of insolvent's estate under—Suppression of execution of judgment pending sequestration—No discharge of insolvent—Insolvent's real estate out of colony.
Frith v. *Wollaston*, 7 Ex. 194; 21 L. J. Ch. 108.

182. Judgment of Admiralty Court in Malta—Suit for damages awarded by—Transcript of proceedings—Express statement of sentence of Admiralty Court and that defendant within jurisdiction.
Obicini v. *Bligh*, 8 Bing. 335; 1 M. & Sc. 477.

183. Judicial separation—Jurisdiction—Husband's domicile in Australia—Matrimonial home in Australia—Cruelty committed in Italy—Residence of both parties within jurisdiction at commencement of suit—Apprehension of further cruelty—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 7, 22, 25, 26.
Armytage v. *Armytage*, L. R. (1898) P. 178.

184. Jurisdiction—Plaintiff in England—Defendants executors of deceased partner, some in England, some in Jamaica—Suit properly instituted in England.
Hendrick v. *Wood*, 30 L. J. Ch. 583.

185. Jurisdiction—Colonial partnership—Action against—"Carrying on business within the jurisdiction"—Service of writ—Ord. xlviii. rr. 1, 3, 8.
Worcester City and County Banking Co. v. *Firbank, Pauling and Co.*, L. R. (1894) 1 Q. B. 784.

186. Kidnapping Act, 1872 (35 & 36 Vict. c. 19)—Prohibition of carrying Polynesian labourers in unlicensed ships—Penalty, forfeiture of ship—Unlicensed carrying by master without owner's authority—Seizure and condemnation of ships—Act of barratry—Recovery against underwriters.
Australasian Insurance Co. v. *Jackson*, 33 L. T., N. S., 286.

187. Island of Sark—Bill to redeem mortgage of or to foreclose—Plea, island part of Duchy of Normandy with its own laws and under jurisdiction of courts of Guernsey, overruled—Mortgage of whole island—Defendant within jurisdiction of English court—*Equitas agit in personam.*
Toller v. *Carteret*, 2 Vern. 494.

188. Isle of Man—Question concerning right and title to—Determination of in court of equity in England.
Earl of Derby v. *Duke of Athol*, 1 Ves. Sen. 201; 2 Ves. Sen. 337.

189. Lands out of jurisdiction—Power of court of equity over by decree *in personam*—Boundaries of two provinces in North America—Specific performance decreed of articles executed in England concerning.
Penn v. *Lord Baltimore*, 1 Ves. Sen. 444; 2 W. and T. 5th ed. 939.*

190. Lands in British dominions abroad—Equity jurisdiction *in personam* in transactions concerning—Purchase of estate in West Indies by creditor under his own execution—Held security for debt, expenses, and incumbrances with interest—Reconveyance.
Lord Cranstown v. *Johnson*, 3 Ves. 170; 5 Ves. 277.*

191. Lands in colonies—No doubt of jurisdiction upon contracts as to land in West Indian colony if parties in England.
Jackson v. *Petrie*, 10 Ves. 164.*

192. Land in Jamaica—Law of evidence in Jamaica applied in English courts in dealing with—Bill for payment of legacies, &c., out of, and to settle boundaries of, entertained in Court of Chancery in England.
Tulloch v. *Hartley*, 1 Y. & C. C. C. 114.*

193. Land in Demerara—Injunction on terms to restrain proceedings instituted in Demerara to recover—Order for a consignee and manager of the estate and produce—Questions between the parties connected with the estate more conveniently determinable together in England.
Bunbury v. *Bunbury*, 1 Beav. 318. And see Seton on Decrees, 4th ed. i. 448 *seq.**

194. Lands in Island of Nevis, West Indies—Mortgage—Foreclosure, jurisdiction to decree—English mortgagor and mortgagee—Decree *in personam*.
Paget v. *Ede*, L. R. 18 Eq. 118; 43 L. J. Ch. 571.*

195. Land in Demerara—Contract for mortgage—Construction before court of competent jurisdiction in the colony—Injunction against foreclosure and sale refused.
White v. *Hall*, 12 Ves. 321.

196. Lands at St. Christopher's—Bill to deliver possession of—No jurisdiction to entertain in English Court of Chancery.
Roberdeau v. *Rous*, 1 Atk. 543.

197. Lands in Pennsylvania (when English colony)—Bill by heir-at-law to try validity of brother's will of dismissed—Will of lands lying in colony not triable in Westminster Hall.
Pike v. *Hoare*, 2 Eden, 182.

198. Local action—Trespass for entering house in Canada—Not maintainable in England.
Doulson v. *Matthews*, 4 T. R. 503.

199. Land in colonies—Title to, questions of—To be decided first in local courts, whence appeal to King in Council.
Attorney-General v. *Stewart*, 2 Mer. 143.

* See *British South Africa Co.* v. *Companhia de Moçambique*, L.R. (1893), A. C. 602.

200. Land in Canada vested in Queen by colonial Act for public purpose —No jurisdiction under Petition of Right Act, 1860 (23 & 24 Vict. c. 34), in Court of Chancery against Crown as trustee of such land present within the jurisdiction.

Re Holmes, 2 Joh. & H. 527; 31 L. J. Ch. 58, *nom. Holmes* v. *The Queen*.

201. Land in Australia—Rent-charge upon—Action of debt for arrears—Local venue.

Whitaker v. *Forbes*, L. R. 1 C. P. D. 51. See now 38 & 39 Vict. c. 77, Ord. xxxvi. r. 7.

202. Lands in colonies—Devise of—Construction of as to lands in colony subject to English law (New South Wales)—Inquiry as to effect of will as to lands in Ceylon by law in force in that colony.

Greenway v. *Greenway*, 2 De G. F. & J. 128; 29 L. J. Ch. 601.

203. Lands situate out of the jurisdiction (Demerara)—Proceeds of sale of —Enforcing equities to which land within jurisdiction subject—Capability of fulfilment of contract by *lex loci rei sitæ*—Proceeds of sale of lands without jurisdiction *in specie* within the jurisdiction—Rights of parties in governed by *lex loci rei sitæ*—Restraints upon alienation of land governed by *lex loci rei sitæ*.

Waterhouse v. *Stansfield*, 9 Hare, 234; 21 L. J. Ch. 881.

204. Lands in British Guiana—Rights in by way of charge, mortgage, or lien, how created by law of colony—Judicial act of Supreme Court of Civil Justice in colony—Assignment in England of benefit of contract for purchase of land in colony as security for moneys lent to complete purchase—Not enforceable against *lex loci rei sitæ*—Rights of general creditors of purchaser over the land after payment of purchase-money.

Waterhouse v. *Stansfield*, 10 Hare, 254.

205. Lands in Jamaica—Agreement between A. and B. for lease of twenty-one years—Entry of B. into possession—Death of B. without paying rent—A. not entitled to rank as specialty creditor against B.'s estate for rent due—No relation of landlord and tenant created—No privity of estate in case of lands out of England.

Vincent v. *Godson*, 4 De G. M. & G. 546; 24 L. J. Ch. 121.

206. Lands in Demerara—Marriage settlement of for benefit of wife and children—Lands held in fee by intended wife—Subsequent mortgage by husband and wife to persons with notice of settlement—Nullity of settlement by law of Demerara—Validity of mortgage—Attachment of equity of wife and children on person of husband not on estate.

Martin v. *Martin*, 2 Russ. & My. 507.

207. Lands in West Indies—Advances for supplies to estate—Acting consignees—Tenant in common—Nature of the subject requiring expenditure—Allowances in respect of advances—Lien for.

Scott v. *Nesbitt*, 14 Ves. 438.

208. Lands in Jamaica—Supplies furnished to estates—Lien for against produce of—Agreement implied from course of business and conduct of parties.

Simond v. *Hibbert*, 1 R. & M. 719.

209. Lands in Jamaica—West India estate, consignee of—Payments by on account of annuity charged on estate—Reimbursement out of compensation money under Slavery Abolition Act.
Shaw v. *Simpson*, 1 Y. & C. C. C. 732.

210. Lands in Tobago—West India estate, consignee of appointed by court—Not entitled to payment during office of balance out of compensation under Slavery Abolition Act.
Farquharson v. *Balfour*, 8 Sim. 210.

211. Lands in Tobago—Consignee of West India estate appointed by court—Discharge of at own request—Large balance due to—Indemnification of out of slaves' compensation money paid into court—Priority to mortgagee—Mortgage prior to suit—Mortgagee not party to suit till after consignee's discharge—Consignee appointed after mortgagee party to suit and slaves' compensation money paid into court—Large balance due to—Payment to after discharge.
Morrison v. *Morrison*, 2 Sm. & G. 564.

212. Lands in Dominica—Absolute owner in fee of—Appointment of manager by—Lien of manager on inheritance for salary and expenses—Manager appointed by tenant for life—No lien on inheritance on death of tenant for life—Lien on emblements—Refusal of manager to give up possession to remainderman—Treatment of as mortgagee—Accounts—Manager appointed by mortgagor—Death of mortgagor—No lien of manager against non-acquiescent mortgagee.
Bernard v. *Davies*, 32 L. J. Ch. 41; 31 Beav. 429, *nom.* *Bertrand* v. *Davies*.

213. Lands in West Indies—Devise on trust for sale and distribution of proceeds among testator's children—Suit for administration—Appointment of consignees of estate—Settlement of children's shares—Payments by consignees sanctioned by court—Consignees' right to charge upon *corpus* of trust estate.
Morison v. *Morison*, 7 De G. M. & G. 214.

214. Lands in Jamaica—Trustee and executor of owner of one moiety of plantation—Taking of lease by of other moiety—Suit in England for execution of trusts of will—Persons in Jamaica appointed receivers and managers of testator's estates—Possession by of entire plantation—Proceeds paid into court in England—Payment of rent for moiety leased—Reference as to dilapidations.
Neate v. *Pink*, 3 Mac. & G. 476; 21 L. J. Ch. 574.

215. Land in Trinidad—Legal estate in defendants—Beneficial interest bound by creditors' deed—One defendant British subject resident in Trinidad—Leave given to serve writ on in Trinidad—Rules of Supreme Court, 1883, Ord. xi. r. 1 (*g*).
Jenney v. *Mackintosh*, L. R. 33 Ch. D. 595.

216. Law, colonial—Act of colonial legislature—Rules of construction—English authorities on Act *in pari materia*.
Catterall v. *Catterall*, 1 Robert. 580. *Vide ante*, 66.

217. Law, colonial—Must be proved as matter of fact.
Astley v. *Fisher*, 6 C. B. 572; 18 L. J. C. P. 59.

218. Law, colonial—Proof of in Admiralty Court—Strictness of courts of common law not adhered to.
The Peerless, 1 Lush. 30; 29 L. J. Adm. 49.

219. Law, colonial—Tobago—Measure of damages on dishonour of bill of exchange in England by bankruptcy of acceptor—Re-exchange.
In re Gillespie, Ex parte Robarts, L. R. 18 Q. B. D. 286.

220. Law, colonial, notice of—Residence in England of member of company carrying on business in New South Wales—Colonial Act enabling chairman of company to sue and be sued for company—Action against member in England on judgment recovered in colony against chairman—Cumulative remedy against members—Foreign judgment how far conclusive.
Bank of Australasia v. *Harding*, 9 C. B. 661; 19 L. J. C. P. 345. See *post*, 226.

221. Law, foreign, proof of—Application of English law in absence of such proof—Lands in a colony.
Bentinck v. *Willink*, 2 Hare, 1.

222. Law, foreign, evidence of—Knowledge of derived from study—Admissibility.
In the Goods of Bonelli, L. R. 1 P. D. 69; 45 L. J. P. D. 42.

223. Legacy duty—Testator domiciled Englishman—Appointment of as Chief Justice of Ceylon—Removal of to and residence in Ceylon—Probate of will in Ceylon—Liability of personal estate to duty—Domicile.
Attorney-General v. *Rowe*, 1 H. & C. 31; 31 L. J. Ex. 314.

224. Legacy duty—Testator British subject—Domicile in British colony (Demerara)—Will made in colony—No legacy duty in colony—Probate taken out in Scotland to administer property there—Legacies paid to legatees resident in Scotland—Freedom from legacy duty.
Thomson v. *H.M. Advocate-General*, 12 C. & F. 1; 13 Sim. 153.

225. Legal process, unconscientious use of—Acquisition by creditor of estate in West Indies by—Reconveyance on payment of what due—Deprivation of costs.
Lord Cranstown v. *Johnston*, 5 Ves. 277.

226. Legislature of New South Wales, Act of—Actions to be by and against chairman of company—Execution against member for time being—Authority to pass such Act—Repugnancy to law of England or natural justice—Effect of judgment beyond the territory—Extent to which foreign or colonial judgment examinable—No merger in case of foreign or colonial judgment against co-contractor.
Bank of Australasia v. *Nias*, 16 Q. B. 717; 20 L. J. Q. B. 284. See *ante*, 220.

227. Legislature of Queensland—Act of powerless to affect rights under contract of English stockholders not domiciled in colony in an English company carrying on business in colony.
Spiller v. *Turner*, L.R. (1897) 1 Ch. 111.

228. Lien—Claim of attorney of Supreme Court of New South Wales on deed for costs due to him by plaintiff—Want of allegation that law of New South Wales not inconsistent with lien claimed—9 Geo. 4, c. 83, s. 16, effect of—Colonial law, proof of.
Astley v. *Fisher*, 6 C. B. 572; 18 L. J. C. P. 59.

229. Life insurance—"Never been heard of"—Evidence of being seen in Melbourne, New South Wales—Misdirection of jury.
Prudential Assurance Co. v. *Edmonds*, L. R. 2 App. 487. Cp. *ante*, 25, 87, 88.

Limitation of general words of statute, when necessary—55 Geo. 3, c. 184. See *ante*, 200.

230. Limitations, Statute of—Plea of judgment on in Isle of Man—No bar to action in England—Attorney's bill, action on—Continuous employment.
Harris v. *Quine*, L. R. 4 Q. B. 653; 38 L. J. Q. B. 331; 10 B. & S. 644.

231. Limitations, Statute of (3 & 4 Will. 4, c. 27)—Annuity charged on real estate in Jamaica—Last payment in 1842—Rents and profits since 1870—Arrears—Statute not applicable to Jamaica.
Pitt v. *Lord Dacre*, L. R. 3 Ch. D. 295; 45 L. J. Ch. 796.

232. Limitations, Statute of, or possessory law of Jamaica, 4 Geo. 2—Not merely bar of legal remedy—Seven years' possession converted into positive absolute title—No exception in favour of absentees—Trustees, meaning of exception as to—Tenants for life—Statutes, construction of.
Beckford v. *Wade*, 17 Ves. 87.

233. Loan—Usury—Consignment of goods to Gibraltar—Advance of two-thirds invoice price on delivery of bills of lading and invoices in London—Bill at ninety days at 6 per cent.—Usual rate in Gibraltar—Not loan in England nor usurious.
Harvey v. *Archbold*, 3 B. & C. 626; Ry. & M. 184. (Usury laws repealed by 17 & 18 Vict. c. 90.)

234. Lunatic in colony—Pauper—Married woman—Separate estate—Accrued and future dividends paid to Master in Lunacy for maintenance—Colonial statute.
In re Baker's Trusts, L. R. 13 Eq. 168; 41 L. J. Ch. 152.

235. Lunatic, not so found by inquisition, detained in asylum in New South Wales—Entitled for life to income, and absolutely to accumulations, from one-third of testator's residuary estate—Maintained for years by Colonial Government at total expense of £803—Powers of Master in Lunacy in New South Wales to sue for and receive debts due to patients—Property of patients not vested in him—Payment to him of £803 and income of remainder of fund, and of patient's share of income of residuary so long as lunatic detained as insane in New South Wales—New South Wales Lunacy Act, 42 Vict. c. 7.
In re Barlow's Will, L. R. 36 Ch. D. 387; 56 L. J. Ch. 795. Distinguished in *In re De Linden; In re Spurrier's Settlement; De Hayn* v. *Garland*, L. R. (1897) 1 Ch. 453.

236. Lunatic so found in Jamaica—Property of situated in Jamaica—Lunatic brought to England accompanied by one of his committees—Issue of commission in lunacy against him in England.
In re Houstoun, 1 Russ. 312.

237. Lunatic in Victoria so found by inquisition—Appointment of colonial Master in Lunacy to manage property—English stock standing in lunatic's name—Transfer of to Master in Victoria—"Vesting" of

lunatic's estate—Lunacy Act, 1890 (53 & 54 Vict. c. 5, s. 134)—Victoria Lunacy Act, 1890.

In re Brown, L. R. (1895) 2 Ch. 666.

238. Lunatic resident in Jersey—Jersey curator—English stocks and shares in name of lunatic—Vesting of in curator—Transfer of to curator—Discretion of court—Lunacy Act, 1890 (53 & 54 Vict. c. 5, ss. 134, 341).

In re Knight, L. R. (1898) 1 Ch. 257.

239. Marriage, colonial—Validity of—Evidence of persons qualified for reasons connected with profession or business to express opinion.

Wilson v. *Wilson*, L. R. (1903) P. 157.

240. Marriage in Hong Kong—Proof of validity of—Affidavit of ex-Governor of the colony.

Cooper-King v. *Cooper-King*, L. R. (1900) P. 65.

241. Marriage, proof of—Collated copy of entry in register at Barbados—Admitted in evidence.

Cood v. *Cood*, 1 Curt. 755.

242. Marriage at Gibraltar between Frenchman and Englishwoman—Residence of husband in England—Domicile in France—Divorce granted in England—20 & 21 Vict. c. 85, ss. 27, 31.

Niboyet v. *Niboyet*, L. R. 4 P. D. 1. Practically overruled by the decision of the Privy Council in *Le Mesurier* v. *Le Mesurier*, L. R. (1895) A. C. 517.*

243. Marriage, nullity of—*Lex loci* of Holland—Celebration at Cape of Good Hope between British subjects by chaplain of British forces in occupation under capitulation.

Ruding v. *Smith*, 2 Hagg. Consist. 371.

244. Marriage, nullity of—Decree of by court in New Zealand—Return of parties to England—Petition by to High Court in England for variation of settlements—Application refused for want of jurisdiction—20 & 21 Vict. c. 85, s. 45—22 & 23 Vict. c. 61, s. 5.

Moore v. *Bull*, L. R. (1891) P. 279.

245. Marriage in British colony—Proof of solemnization by clergyman of Church of England according to rites of that church—Sufficient evidence for purpose of divorce.

Limerick v. *Limerick*, 4 S. & T. 252; 32 L. J. P. M. & A. 92.

246. Marriage in British possession (St. Lucia)—Rites and ceremonies of Church of England—Priest in holy orders—Parish Church—Licence duly obtained—Validity.

Ward v. *Dey*, 1 Robert. 759.

247. Marriage on board British man-of-war lying at Limasol, Cyprus—British subjects—Chaplain of ship clergyman of Established Church—No banns—No licence—Valid by common law.

Culling v. *Culling*, L. R. (1896) P. 116.

248. Marriage in Ireland—Subsequent cohabitation in English colony—Divorce in Cape Colony—Presumption of domicile—Marriage of divorcee and co-respondent in England—Validity of—Roman-Dutch law—Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93).

Scott v. *H.M. Attorney-General*, L. R. 11 P. D. 128.

* *Ante*, CEYLON, 17. And see *Armytage* v. *Armytage*, L. R. (1898) P. 178, *ante* 183.

249. Marriage—9 Geo. 4, c. 83—Act of New South Wales, 1834—Non-compliance with provisions of—No words expressly creating nullity—Validity.
Catterall v. *Sweetman*, 1 Robert. 304.

250. Marriage by domiciled Englishman at the Mauritius—French law in force there—Settlement in French language and form—Declaration in that parties intended to marry according to laws of England and claim their benefit—Acknowledgment by husband of receipt of sum of wife's—Stipulation as to investment of—Sum not actually received—Death of husband intestate—Right of widow to receive sum out of assets—Distributive share of residue.
Lang v. *Lang*, 8 Sim. 451; 6 L. J. Ch. 324.

251. Marriage, presumption of—Laws and customs of uncivilized community in New Zealand previously to its becoming a British colony—Insufficient evidence.
Armitage v. *Armitage*, L. R. 3 Eq. 343.

252. Marriage settlement—Jamaica estate limited to trustees for term of years to raise a sum to be laid out in land in England to be settled on husband for life, remainder to wife for life—Option to wife to have annuity out of the land—Mortgage by wife and husband of the Jamaica estate in fee before sum raised—Wife and husband resident in England—Acknowledgment of deed by wife before magistrate—Equivalent by Jamaica law to levying fine—Wife barred of claim to provision by settlement.
Forbes v. *Adams*, 9 Sim. 462; 8 L. J. Ch. 116.

253. Marriage settlement, construction of—Domicile of settlor—Law of country where settlement executed—Jurisdiction of court.
Rainy v. *Ellis*, 26 L. T., N. S., 602.

254. Married woman—Acknowledgment by under 3 & 4 Will. 4, c. 74—Affidavit of verification in Guernsey.
Re Mann, L. R. 10 C. P. 473.

255. Married woman—Acknowledgment by under 3 & 4 Will. 4, c. 74—Taken before special commissioners in Melbourne, New South Wales—Documents returned without commission—Filing—Omission of one of three Christian names of a commissioner—Affidavit of identity.
Re Edsall, Re Thomas, L. R. 10 C. P. 472; 44 L. J. C. P. 228.

256. Married woman—Commission for taking acknowledgment of in Sydney, New South Wales—Blank for her Christian name—3 & 4 Will. 4, c. 74.
In re Apperton, 1 C. B. 447.

257. Married woman—Commission for taking acknowledgment in Australia—Blank for Christian name of husband—3 & 4 Will. 4, c. 74, s. 83.
In re Legge, 15 C. B. 364.

258. Married woman—Certificate of acknowledgment and affidavit of verification taken in New South Wales—Erasure in material part of affidavit—Evidence that erasure made before acknowledgment taken and affidavit sworn—Reception and filing of.
In re Bingle, 15 C. B. 449.

259. Married woman—Acknowledgment by at Sydney—Jurat of affidavit of due taking—Interlineation—Erasure—Refusal to file—Refusal to enlarge time for returning the commission.

In re Tierney, 15 C. B. 761. As to affidavits verifying acknowledgments of deeds by married women in the colonies, *vide* Reg. Gen. C. P. 13 Jan. 1863, 13 C. B., N. S., 406.

260. Merchant Shipping Act, 1854—Applies to colonies—Lien of master for wages in Vice-Admiralty Court under s. 191 not affected by additional provision in favour of seamen in s. 209—Right of master, compelled by ill-health to leave ship abroad, to immediate action for wages—Wages thus paid allowed under bottomry bond—*Onus* on owner to show amount improper.

The Rajah of Cochin, Swab. 473.

261. Mortgage, equitable—Canada bonds, deposit of—Pledgee of chattels—No right of foreclosure.

Carter v. *Wake*, L. R. 4 Ch. D. 605; 46 L. J. Ch. 841.

262. Mortgage of estates in Ceylon to bank—Second mortgage to R. & Co.—Covenant by bank to transfer mortgage to R. & Co. on payment of mortgage debt—Covenant not duly executed by law of Ceylon—Payment by R. & Co. with funds advanced by S. on agreement for transfer of mortgage to him—Letter of R. & Co. to bank directing them to transfer mortgage to S.—Possession subsequently demanded and obtained by R. & Co. from bank as next registered incumbrancers—Bill by S. against bank for breach of trust—Equitable assignment not constituted by law of Ceylon—No defence by bank to demand of R. & Co.—Bill dismissed.

Sichel v. *Raphael*, 34 L. J. Ch. 106.

263. Mortgage of plantation in Grenada—Consignee—Produce severed before appointment of—Right to proceeds of.

Codrington v. *Johnstone*, 8 L. J. Eq. 282.

264. Mortgage securities in New Zealand—Liable to probate duty in England.

Lord Sudeley v. *Attorney-General*, L. R. (1897) A. C. 11.

265. Mortgagor—Legal estate not conferred on by Trust Property Act of 1862, New South Wales (26 Vict. No. 12), s. 25.

Farmer and Co. v. *Inland Revenue Commissioners*, L. R. (1898) 2 Q. B. 141.

266. Mortmain, statute of, 9 Geo. 2, c. 1—Does not extend to Island of Grenada, West Indies—Questions of title to land in colonies to be decided first in local courts, whence appeal to King in Council.

Attorney-General v. *Stewart*, 2 Mer. 143.

Name of colonial company same as that of English company—*Vide ante*, 76.

267. Notaries public—Discretion of the Master of Faculties as to appointments of in the colonies—25 Hen. 8, c. 21—No qualifications prescribed—Chartered accountant holding various official appointments in Victoria and other States of the Commonwealth of Australia—Circumstances guiding the Master of Faculties in fixing the number to be appointed in any particular place where the appointment in his discretion.

Bailleau v. *Victorian Society of Notaries*, L. R. (1904) P. 180.

268. Nova Scotia—Grant of mines in—Cape Breton, separation of from Nova Scotia—Mines included in grant.
Taylor v. *Attorney-General*, 8 Sim. 413.

269. Offences committed in colonies by persons holding and in execution of public employment there—Trial and punishment of in Great Britain—42 Geo. 3, c. 85—Does not extend to felonies.
Rex v. *Shawe*, 5 M. & S. 403.

270. Offices—Sale of—5 & 6 Ed. 6, c. 16—Does not extend to Barbados—Penal statutes do not extend to new things not *in esse* at time of making.
Dawes v. *Painter*, Freem. 175.

271. Office in colony—Information for attempting to bribe Privy Councillor to procure—Clerk to Supreme Court of Jamaica.
Rex v. *Vaughan*, 4 Burr. 2494.

272. Pardon, conditional—Effect of—6 & 7 Vict. c. 7—Subsequent vesting of share under settlement containing clause against alienation by beneficiaries—Forfeiture to Crown—Forfeiture for attempted alienation.
Barnett v. *Blake*, 2 Drew. & Sm. 117; 31 L. J. Ch. 898, *nom.* *Blake* v. *Barnett*; and cf. *Gough* v. *Davies*, 2 K. & J. 623; 25 L. J. Ch. 677; *ante*, 116.

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273. Patent, colonial—Licence to use—Not property locally situate out of United Kingdom—Liability to stamp duty—54 & 55 Vict. c. 39, s. 59, sub-s. 1.
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APPENDIX I.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

AGNES ROBINSON, Plaintiff in the Superior Court, and Respondent in the Court of Queen's Bench . . . . . *Appellant,*

AND

THE CANADIAN PACIFIC RAILWAY COMPANY, Defendants in the Superior Court, and Appellants in the Court of Queen's Bench . . . . . *Respondents.*

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The Record itself is not printed here, being too bulky.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

AGNES ROBINSON, Plaintiff in the Superior Court and Respondent in the Court of Queen's Bench . . . . . *Appellant,*

AND

THE CANADIAN PACIFIC RAILWAY COMPANY, Defendants in the Superior Court and Appellants in the Court of Queen's Bench . . . . . *Respondents.*

CASE FOR THE APPELLANT.

This is an appeal by special leave from a judgment of the Supreme Court of Canada, dated the 22nd of June, 1891, whereby a judgment of the Court of Queen's Bench for Lower Canada, Appeal Side, District of Montreal, dated the 19th of June, 1890, which had affirmed a judgment, dated the 31st of January, 1889, of the Superior Court in Review, was, by a majority of four to one judges of the Supreme Court, reversed, and judgment given in favour of the present respondents against the present appellant, dismissing and refusing the present appellant's motion for judgment upon and in accordance with the verdict of the jury in the cause, and dismissing and refusing the present respondents' motions for a new trial and in arrest of judgment, but granting and allowing the present respondents' motion for judgment *non obstante veredicto.*

The Supreme Court gave judgment against the appellant on the ground that her action was barred by prescription.

The appellant is the widow of Patrick Flynn, who, on the 27th of August, 1882, whilst in the employ of the respondents, was injured by the negligence and carelessness of the officers and employées of the respondents, and as the result of such injury Patrick Flynn died in the City of Montreal on the 13th of November, 1883, not having instituted any action against or received any indemnity or satisfaction from the respondents. On the 17th of May, 1884, the appellant commenced the present action, as well for herself as in her capacity of tutrix of her minor child, Agnes Mary Flynn, then aged eight years, to recover damages occasioned by the death of the said Patrick Flynn. The action was brought under Article 1056 of the Civil Code of Lower Canada, which is in the terms following :— Record, p. 1.

"In all cases where the person injured by the commission of "an offence or a quasi-offence dies in consequence without "having obtained indemnity or satisfaction, his consort and "his ascendant and descendant relations have a right, but only "within a year after his death, to recover from the person who "committed the offence or quasi-offence, or his representatives, "all damages occasioned by such death. In all cases no more "than one action can be brought in behalf of those who are "entitled to the indemnity, and the judgment determines the "proportion of such indemnity which each is to receive. These "actions are independent, and do not prejudice the criminal "proceedings to which the parties may be subject."

The respondents pleaded that the accident in question had not been caused by any fault or negligence on their part, but that it had been caused solely by the negligence of the said Patrick Flynn. p. 6.

The action was tried on the 27th and 28th of April, 1885, and the jury found a verdict for the plaintiff, the present appellant, and awarded $2000 to her as her damages, suffered by reason of the death of her husband, and $1000 to Agnes Mary Flynn, her minor child. Whereupon the appellant moved the Superior Court in Review for judgment upon and in accordance with the finding of the jury, and the respondents moved for a new trial on the ground, amongst others, that the judge at the trial misdirected the jury in telling them that in assessing the damages they had a right to consider the anguish and p. 8. p. 10.

p. 11. mental sufferings of the widowed mother and orphan child. On the 30th of June, 1885, the Supreme Court in Review, by a majority of two to one, refused the appellant's motion for judgment, and granted the respondents' motion for a new trial.

Record, p. 12. On the 16th of January, 1886, the Court of Queen's Bench, on appeal, reversed the judgment of the Superior Court in Review, and gave judgment for the appellant.

On the 20th of June, 1887, the Supreme Court of Canada reversed the judgment of the Court of Queen's Bench, and gave judgment refusing the appellant's motion for judgment and granting the respondents' motion for a new trial.

On the 19th of December, 1887, the respondents obtained permission to amend their pleadings, and amended them accordingly, but such amended pleadings did not contain any plea that the appellant's action was barred by prescription.

The action came on for trial a second time on the 28th and 29th of November, 1888, and resulted in a verdict for the appellant, the jury assessing the damages at $4500, and those of her minor child at $2000. Thereupon the respondents made to the Superior Court in Review three motions.

(1) A motion for a new trial for reasons not material to this appeal.

p. 25. (2) A motion for judgment *non obstante veredicto* on the ground that Patrick Flynn, the husband of the appellant, was injured on the 27th day of August, 1882, and died on the 13th November, 1883, and the right of the appellant to recover damages was prescribed and extinguished before the death of Patrick Flynn, and the action of the appellant was not instituted until the 17th of May, 1884, and by law and the statutes in such case made and provided all rights of action against the respondents were prescribed before the institution of this action, and the plaintiff never had, or had not at the time of the institution of the suit, any right of action.

p. 26. (3) A motion for arrest of judgment on the same grounds as the motion for judgment *non obstante veredicto*, and the appellant moved for judgment in accordance with the findings of the jury.

The contention was thus for the first time raised by the respondents that the appellant's action was prescribed.

On the 31st of January, 1889, the respondents' three motions were dismissed, and the appellant's motion for judgment was granted by a majority of two to one of the judges of the Superior Court in Review.

It was contended on the part of the respondents that at the time of his death Patrick Flynn's action against the respondents was prescribed by Article 2262 (2) of the Code, and the appellant only having the same right of action as her deceased husband, her action was also prescribed, and the following Articles of the Code were relied on in favour of such prescription, and as showing that it need not be pleaded.

The following actions are prescribed by one year :—

(2) For bodily injuries saving the special provisions contained in Article 1056 and cases regulated by special laws. Article 2262.

The Court cannot, of its own motion, supply the defence resulting from prescription, except in such cases where the right of action is denied. Article 2188.

In all the cases mentioned in Articles 2250, 2260, 2261, and 2262, the debt is absolutely extinguished, and no action can be maintained after the delay for prescription has expired. Article 2267.

On the part of the appellant it was contended that the action of Patrick Flynn against the respondents was not prescribed by one year under Article 2262 (2), but was prescribed by two years under Article 2261 (2); and as Flynn died within two years of the accident, his action would not have been prescribed at his death.

Article 2261 (2) is as follows :—

The following actions are prescribed by two years.

For damages resulting from offences or quasi-offences whenever other provisions do not apply.

The grounds on which it was suggested that Article 2262 (2) was not applicable are that the actions for "bodily injuries" mentioned in that Article are not actions for injuries such as Flynn suffered through the respondents' negligence, but that "bodily injuries" are injuries such as result, for instance, from an assault or wrongful overt act, and that this interpretation of Article 2262 is borne out by the French version of the Article, which renders the words "bodily injuries" as "*injures corporelles*" and not *dommages corporeles*, making use of the word "injuries," which means injuries inflicted with malice.

The remarks of Mr. Justice Taschereau on this are to be found at page 29 of the Record.

It was further contended that by the very words of Article 2262 (2) actions brought under Article 1056 were exempted from its operation.

The main contention, however, of the appellant is that even if Patrick Flynn's action was prescribed at his death, yet that does not affect the appellant's right to bring the present action. The words of Article 1056 are clear. By it a right is given to the appellant to recover all damages occasioned by the death; the right is given her personally, and not in any way as representing her husband; the only limitations on the right are that the deceased must not have obtained any indemnity or satisfaction, and that the action must be brought within a year of the death.

The reasons of Mr. Justice Taschereau in favour of this contention are to be found at page 30 of the Record, and those of Mr. Justice Davidson at page 33 of the Record.

The majority of the Superior Court in Review were also of opinion that the prescription relied on to be available should have been pleaded. The reasons of Mr. Justice Taschereau for this opinion are to be found at pages 29 and 30 of the Record, and those of Mr. Justice Davidson at page 33 of the Record. Mr. Justice Wurtele, who dissented from the majority of the Court, and held that Patrick Flynn's action being prescribed at his death the appellant's action was also prescribed, based his decision not on the words of Article 1056, but on the interpretation that had been given in England to Lord Campbell's Act, holding that the action under Article 1056 was the same as the action under Lord Campbell's Act.

The appellant submits that, even under Lord Campbell's Act, the action by the widow was a new action, which would not fail because the deceased's right of action had been barred by prescription, but that in any case this action must be decided by the words of the Canadian Code, which differ from the words of Lord Campbell's Act. The Canadian Code represents the effect of the statute as applied to the previous law of Lower Canada, which, unlike the English Common Law, gave, apart from statute, a right of action to the relatives of a deceased

person against any person by whose negligence his death had been caused.

On the 19th of June, 1890, the Court of Queen's Bench, on appeal, unanimously confirmed the last-mentioned judgment of the majority of the Superior Court in Review. The reasons of their decision are not given in full in the Record, but they appear to have decided on the ground that the action by the widow was a new action, which would not fail on account of the action by the deceased being prescribed. Record, p. 70, s. 12.

On the 22nd of June, 1891, the Supreme Court of Canada, by a majority of four to one, reversed the judgment of the Court of Queen's Bench on appeal, and gave judgment dismissing the appellant's motion for judgment, dismissing the respondents' motions for a new trial and in arrest of judgment, but granting the respondents' motion for judgment *non obstante veredicto*, and ordered and adjudged that the appellant should pay to the respondents the respondents' costs of the action, including the respondents' costs in the Superior Court, also the respondents' costs of appeal to the Court of Queen's Bench and to the Supreme Court.

Mr. Justice Taschereau was the only judge of the majority of the Supreme Court giving judgment adverse to the appellant who gave reasons.

Mr. Justice Taschereau, like Mr. Justice Wurtele, the dissenting judge in the Superior Court in Review, based his decision on the principle that the action given by Article 1056 of the Code is the same as the action given by Lord Campbell's Act, and that the English decisions on that Act apply to the present case.

It is submitted that this is erroneous, as above stated, and it is furthermore to be observed that the English decisions could not have contemplated such a state of affairs as the action of the deceased being prescribed, the period of limitation in England being six years.

The reasons of Mr. Justice Fournier, who dissented from the majority of the Supreme Court, are to be found at pp. 67, 68, 69 and 70 of the Record.

The appellant humbly submits that the judgment of the Supreme Court of Canada of the 22nd of June, 1891, is erroneous and ought to be reversed, and the judgment of the

Superior Court and the Court of Queen's Bench restored, for the following amongst other

REASONS.

1. Because any action which Patrick Flynn would have had before his death against the respondents was not prescribed.
2. Because, even if Patrick Flynn's action would have been prescribed, a new and independent right of action was given to the appellant by Article 1056.
3. Because Article 1056 provides that the only limitation on the appellant's right of action shall be that the deceased should not have obtained indemnity and satisfaction, and that the appellant's action should be brought within a year of the death.
4. Because Patrick Flynn had not obtained indemnity or satisfaction, and the appellant commenced her action within a year of the death.

(Signature of Counsel)

En the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

AGNES ROBINSON . . . . . *Appellant,*

AND

THE CANADIAN PACIFIC RAILWAY COMPANY . . . . . *Respondents.*

CASE OF THE RESPONDENTS.

1. This is an appeal from a decision of the Supreme Court of Canada, rendered on the 22nd of June, 1891, reversing a decision of the Court of Queen's Bench (Appeal Side), and ordering judgment to be entered *non obstante veredicto* for the respondents, the defendants in the action. Rec. p. 54.

2. On the 25th of July, 1891, Her Majesty in Council, on the petition of the appellant, granted special leave to appeal from the said decision, their Lordships intimating that upon the argument the parties should confine themselves to the question which alone their Lordships thought of sufficient importance to warrant them in giving special leave to appeal —namely, the question whether the appellant's action was barred by prescription. They intimated that if any question should arise upon an alternative application for a new trial which had been made by the respondents, it must be remitted for decision to the Court below.

3. The facts material for the purposes of this appeal and which for that purpose are not in dispute, are as follows :— Rec. p. 5.

On the 27th of August, 1882, Patrick Flynn, while in the employ of the respondent Company, was ordered by one of

the Company's Officers to assist in unloading a large iron machine from a truck. Whilst obeying this order, and in consequence, as the jury found, of the negligence of the respondents and of persons placed by them in authority over him, the machine fell upon and crushed both his legs.

4. On the 13th of November, 1883, and consequently upwards of a year after the date of the alleged cause of action, Patrick Flynn died from the injuries caused by the accident, he not having brought any action against the respondents to recover damages for such injuries.

Rec. p. 3. 5. On the 17th of May, 1884, the appellant, who was the widow of Patrick Flynn and had since remarried, commenced the present action against the respondents, claiming damages on her own behalf and also on behalf of an infant daughter by reason of the death of Patrick Flynn, which she alleged to be due to the negligence of the respondents on the occasion aforesaid.

6. The Articles of the Civil Code of Lower Canada upon which the question arises are (so far as material) the following:—

1056. "In all cases where the person injured "by the commission of an offence or a quasi-offence "died in consequence, without having obtained in- "demnity or satisfaction, his consort and his ascend- "ant and descendant relations have a right, but "only within a year after his death, to recover from "the person who committed the offence or quasi- "offence, or his representatives, all damages occa- "sioned by such death."

2262. "The following actions are prescribed "by one year:—(2) For bodily injuries, saving the "special provisions contained in Article 1056, and "cases regulated by special laws."

7. The statute in force at the date of the Code giving the widow and children of a deceased person a right to maintain an action in respect of the injuries causing his death was ch. 78 of the Consolidated Statutes of Canada, of which secs. 1 and 4 are in the following terms:—

"Sec. 1. Whenever the death of a person has been "caused by such wrongful act, neglect or default, as

"would (if death had not ensued) have entitled the "party injured to maintain an action and recover "damages in respect thereof, in such case the person "who would have been liable if death had not "ensued, shall be liable to an action for damages "notwithstanding the death of the person injured, "and although the death has been caused under "such circumstances as amount in law to felony."

"Sec. 4. Not more than one action shall lie for and in "respect of the same subject-matter of complaint; and "every such action shall be commenced within twelve "months after the death of the deceased person."

8. Article 1056 is not one of the Articles of the Code which purported to effect any change in the existing law, and was in fact introduced by the Commissioners after the Code had been submitted to the Legislature.

9. The action came on for trial before Davidson, J., and a jury. The findings of the jury appear at pp. 21–2 of the Record. Rec. pp. 21–22.

10. The respondents moved the Superior Court of Lower Canada sitting in Review in arrest of judgment and for judgment notwithstanding verdict on the ground that the appellant's claim was barred by prescription, and also for a new trial. The appellant moved that judgment should be entered in her favour on the findings of the jury. The majority of the Court, consisting of Taschereau, Davidson, Wurtele, J.J., dismissed the several motions of the respondents, Wurtele, J., dissenting, and ordered judgment to be entered for the appellant for the amount awarded by the jury. Rec. p. 26. Rec. p. 25. Rec. p. 23. Rec. p. 23. Rec. p. 27.

11. The decision of the majority of the Court upon the question of prescription was based upon the ground that this defence was not pleaded in the action, but Taschereau, J., expressed an opinion that the right of action in question was not in respect of corporal injuries, and was therefore not within Article 2262. Wurtele, J., held that the point was open to the respondents and that the action was in fact barred. Their Lordships, in giving leave to appeal, intimated that the question of whether the point of prescription was open to the respondents on the pleadings was not to be raised on the appeal. Rec. p. 29. Rec. p. 35.

12. The respondents appealed to the Supreme Court of Canada, and the case came on for argument before Ritchie, C.J., Strong, Fournier, Taschereau, and Patterson, J.J. The Court (Fournier, J., dissenting) reversed the decision of the Court below upon the respective motions to enter judgment, and ordered that judgment be entered for the respondents, holding that the appellant's right of action was barred.

13. The formal judgment of the Court appears at p. 54, the reasons of Taschereau, J., with which the judges, other than Fournier, J., concurred, at p. 55, and those of Fournier, J., at p. 67 of the Record.

Rec. pp. 55–67.

14. Taschereau, J., delivering the judgment of the majority of the Court, held that Article 1056 simply gave effect to the provisions of secs. 1 and 4 of ch. 78 of the Consolidated Statutes of Canada above referred to, which is nearly identical in its terms with Lord Campbell's Act. He quoted English and American decisions upon Lord Campbell's Act and similar Acts in America which he held to establish that the widow or other person suing thereunder had no cause of action if the deceased at the date of his death had none. He also held that the action in question was an action for bodily injuries within Article 2262 (2) of the Code.

15. Fournier, J., held that the right of action of the widow and children under Article 1056 was entirely distinct from and independent of the right of action of the deceased person, and that consequently the fact that Flynn's action was barred at the date of his death did not affect the right of the appellant.

16. In the event of the question arising whether the respondents were entitled to succeed before the Supreme Court upon their motion for a new trial, the respondents submit to have that question decided by the Supreme Court if their Lordships so direct.

17. The respondents submit that the Appeal should be dismissed for the following among other

REASONS.

1. Because the alleged cause of action of Patrick Flynn was an action for bodily injuries within the meaning of Article 2262 of the Civil Code,

and was at the date of his death barred by prescription.

2. Because Article 1056 of the Civil Code confers no right of action on the relations of a deceased person where such deceased person had at the date of his death no subsisting cause of action for which he then was entitled to obtain indemnity or satisfaction.
3. Because Article 1056 of the Civil Code did not enlarge the right of action conferred by sec. 1 of ch. 78 of the Consolidated Statutes of Canada, and according to the true construction of that statute the appellant acquired no right of action thereunder.
4. Because the reasons of Wurtele, J., Ritchie, C.J., Strong, Taschereau, and Patterson, J.J., are correct, and the reasons of Fournier, J., are not correct.
5. Because on the admitted facts the appellant has no valid ground of action against the respondents.

(Signature of Counsel)

APPENDIX II.

By the Rules and Regulations of 13 June, 1853, of the Privy Council: I. An appellant who succeeds in obtaining a reversal or material alteration of any judgment, decree, or order appealed from, is entitled to recover the costs of the Appeal from the respondent, except in cases in which the Judicial Committee may think fit otherwise to direct.

II. The Registrar or other proper officer having the custody of Records in any Court or special jurisdiction from which an Appeal is brought to His Majesty in Council must send by post, with all possible despatch, one certified copy of the transcript record in each cause to the Registrar of the Privy Council, Whitehall; and all such transcripts are registered in the Privy Council Office, with the date of their arrival, the names of the parties, and the date of the sentence appealed from; such transcript to be accompanied by a correct and complete index of all the papers, documents, and exhibits in the cause; and the Registrar of the Court appealed from, or other proper officer of such Court, should omit from such transcript all merely formal documents, provided such omission be stated and certified in the said index of papers; especial care being taken not to allow any document to be set forth more than once in such transcript; and no other certified copies of the record should be transmitted to agents in England by or on behalf of the parties in the suit; and the fees and expenses incurred and paid for the preparation of such transcript should be stated and certified upon it by the Registrar or other officer preparing the same.

III. When the record of proceedings or evidence in the cause appealed has been printed or partly printed abroad, the Registrar or other proper officer of the Court from which the Appeal is brought must send home the same in a printed form, either

wholly or so far as the same may have been printed, and certify the same to be correct, on two copies, by signing his name on every printed sheet, and by affixing the seal, if any, of the Court appealed from to these copies, with the sanction of the Court.

In all cases in which the parties in Appeals shall think fit to have the proceedings printed abroad, they shall be at liberty to do so, provided they cause fifty copies of the same to be printed in folio, and transmitted, at their expense, to the Registrar of the Privy Council, two of which printed copies shall be certified as above by the officers of the Court appealed from; and in this case no further expense for copying or printing the record will be incurred or allowed in England.

IV. On the arrival of a written transcript of appeal at the Privy Council Office, Whitehall, the appellant or the agent or the appellant prosecuting the same is at liberty to call on the Registrar of the Privy Council to cause it, or such part thereof as may be necessary for the hearing of the case, and likewise all such parts thereof as the respondent or his agent may require, to be printed by His Majesty's Printer, or by any other printer on the same terms, the appellant or his agent engaging to pay the cost of preparing a copy for the printer at a rate not exceeding one shilling per brief sheet, and likewise the cost of printing such record or appendix, and one hundred copies of the same are to be struck off, whereof thirty copies are to be delivered to the agents on each side, and forty kept for the use of the Judicial Committee; and no other fees for solicitors' copies of the transcript, or for drawing the joint appendix, are allowed, the solicitors on both sides being allowed to have access to the original papers at the Council Office, and to extract or cause to be extracted and copied such parts thereof as are necessary for the preparation of the petition of appeal, at the stationer's charge, not exceeding one shilling per brief sheet.

V. It shall be the duty of the appellant or his agent to make such application for the printing of the transcript within the space of six calendar months from the arrival of the transcript and the registration thereof in all matters brought by appeal from Her Majesty's colonies and plantations east of the Cape of Good Hope, or from the territories of the East India Company, and within the space of three months in all matters

brought by appeal from any other part of His Majesty's dominions abroad; and in default of the appellant or his agent taking effectual steps for the prosecution of the Appeal within such time or times respectively, the Appeal shall stand dismissed without further order,* and a report of the same be made to the Judicial Committee by the Registrar of the Privy Council at their Lordships' next meeting.

VI. Whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the agents of the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Lords of the Judicial Committee in the form of a special case, and print such parts only of the transcript as may be necessary for the discussion of the same; provided that nothing herein contained shall in any way bar or prevent the Lords of the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit; and that in order to promote such arrangements and simplification of the matter in dispute, the Registrar of the Privy Council may call the agents of the parties before him, and having heard them, and examined the transcript, may report to the Committee as to the nature of the proceedings.

By order of 31 March, 1855, the above regulations are subject to any Order or Direction which, in the opinion of the Lords of the Judicial Committee, the justice of any particular case may seem to require.

By the Rules of 31 March, 1870: I. Every Proctor, Solicitor, or Agent admitted to practise before His Majesty's Most Honourable Privy Council, or any of the Committees thereof, shall subscribe the following Declaration:—

> We, the undersigned, do hereby declare that we desire and intend to practise as solicitors or agents in Appeals and other matters pending before His Majesty in Council; and we sever-

* As to recovery of costs by respondent secured "to abide the judgment of H.M.," *see* Milson *v.* Carter, L. R. (1893) A. C. 638; 62 L. J. P. C. 126, and *ante*, p. 203.

ally and respectively do hereby engage to observe, submit to, perform, and abide by all and every the Orders, Rules, Regulations, and Practice of His Majesty's Most Honourable Privy Council and the Committees thereof now in force, or hereafter from time to time to be made; and also to pay and discharge from time to time, when the same shall be demanded, all fees, charges, and sums of money due and payable in respect of any Appeal, Petition, or other matter in and upon which we shall severally and respectively appear as such solicitors or agents.

II. Every Proctor, Solicitor, or Attorney practising in London, and duly admitted in any of the Courts of Westminster, shall be allowed to subscribe the foregoing Declaration, and to practise in the Privy Council, upon the production of his certificate for the current year; and no fees shall be payable by him on the enrolment of his signature to the foregoing Declaration.

III. Persons not being certificated London Solicitors, but having been duly admitted to practise as Solicitors by the High Courts of Judicature in India or in the Colonies respectively, may apply, by petition, to the Lords of the Judicial Committee of the Privy Council for leave to be admitted to practise in the Privy Council; and such persons, if admitted to practise by an Order of their Lordships, shall pay annually, on the 15th November, a fee of five guineas to the Fee Fund of the Council Office.

IV. Any Proctor, Solicitor, Agent, or other person practising before the Privy Council, who shall wilfully act in violation of the Rules and Practice of the Privy Council, or of any Rules prescribed by the authority of His Majesty, or of the Lords of the Council, or who shall wilfully misconduct himself in prosecuting proceedings before the Privy Council, or any Committee thereof, or who shall refuse or omit to pay the Council Office fees or charges payable from him when demanded, shall be liable to an absolute or temporary prohibition to practise before the Privy Council, by the authority of the Lords of the Judicial Committee of the Privy Council, upon cause shown at their Lordships' Bar.

By the Rules of 24 March, 1871: I. All cases, records, and other proceedings in Appeals, or other matters pending before the Judicial Committee of the Privy Council, are to be printed in the form known as DEMY QUARTO.

II. The size of the paper used is to be such that the sheet, when folded, will be eleven inches in height and eight inches and a half in width.

III. The type to be used in the text is to be pica type, but long primer is to be used in printing accounts, tabular matter, and notes.

IV. The number of lines in each page of pica type is to be forty-seven, each line being five inches and three-quarters or 146 milimetres in length.

The price in England for printing 75 copies in the form herein established is to be thirty-eight shillings per sheet (eight pages) of pica, with marginal notes, not including corrections, tabular matter, and other extras.

By Order of 26 June, 1873: In Appeals to His Majesty in Council the solicitors or agents for the party appellant are required to take effectual steps to set down their cases for hearing within a period not exceeding twelve months from the date of the arrival and registration of the transcript in England.

The Registrar of the Privy Council is to report to the Lords of the Judicial Committee the names of the parties and dates of the Decrees in Appeals in which no effectual steps have been taken within the aforesaid periods of time to set down the case for hearing; and the Judicial Committee may call upon the appellant or his agent in such cases to show cause why the said Appeal or Appeals should not be dismissed for non-prosecution, and (if they shall so think fit) may recommend to His Majesty the dismissal of any such Appeal, or give such directions therein as the justice of the case may require.

But nothing in the present Order shall prevent the dismissal of an Appeal under the 5th of the Rules of 13 June, 1853, in cases to which that Rule is applicable.

By Order of 20 March, 1905: I. Where a respondent to an Appeal to His Majesty in Council, whose name has been entered on the record of the Appeal by the Court admitting the Appeal, fails to enter an appearance to the Appeal in the Registry of the Privy Council, and it appears from the transcript record in the appeal or from a certificate of the officer of the Court transmitting the said transcript record to the Registrar of the Privy Council that the said respondent has received notice of the Order admitting the Appeal to His Majesty in Council, or of the Order of His Majesty in Council giving the appellant special leave to appeal to His Majesty in Council (as the case may be), and has also received notice of the despatch of the said transcript record to the Registrar of the Privy Council, the appellant shall not, subject to any direction by their Lordships to the contrary, be required to take out Appearance Orders calling upon the said respondent to enter an appearance in the Appeal, and the Appeal may, subject as aforesaid, be set down for hearing *ex parte* as against the said respondent at any time after the expiration of three calendar months from the date of the lodging of the appellant's Petition of Appeal, in like manner as if the said Appearance Orders had been taken out by the appellant, and the times thereby respectively limited for the said respondent to enter an appearance had expired.

II. Where a respondent to an Appeal to His Majesty in Council, whose name has been brought on the Record of the Appeal by an Order of His Majesty in Council, fails to enter an appearance to the Appeal in the Registry of the Privy Council, and it appears from the transcript record or from a supplementary Record in the Appeal or from a certificate of the officer of the Court transmitting the said transcript record or supplementary record to the Registrar of the Privy Council that the said respondent has received due notice of any intended application to His Majesty in Council to bring him on the record as a respondent to the Appeal, the appellant shall not, subject to any direction by their Lordships to the contrary, be required to take out Appearance Orders calling upon the said respondent to enter an appearance in the Appeal, and the Appeal may, subject as aforesaid, be set down for hearing *ex parte* as against the said respondent at any time after the

expiration of three calendar months from the date on which the said respondent shall have been served with a copy of His Majesty's Order in Council bringing him on the record of the Appeal, in like manner as if the said Appearance Orders had been taken out by the appellant, and the times thereby respectively limited for the said respondent to enter an appearance had expired.

III. Nothing herein contained is to be deemed to affect the power of their Lordships to order the appellant in an Appeal referred by His Majesty to their Lordships to take out Appearance Orders, or to be excused from taking out Appearance Orders, in any case in which their Lordships shall think fit so to order, and generally to give such directions as to the time at which and the conditions on which an Appeal so referred as aforesaid shall be set down as in the opinion of their Lordships the circumstances of the case may require.

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